United States Court of Appeals

for the Second Circuit

APPENDIX

76-1022

ORIGINAL

B
P/S

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

WILLIAM SANGEMINO,

Defendant-Appellant.

On Appeal From the United States District Court for the Southern District of New York

APPELLANT'S APPENDIX

Volume I, pp. 1a - 350a

MICHAEL B. POLLACK
Attorney for Defendant-Appellant
1345 Avenue of the Americas
New York, New York 10019
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UNITED STATES COURT OF APPEALS
FILED
MAR 22 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

(9322)

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DOCKET ENTRIES

D. C. Form No. 100
CRIMINAL DOCKET

JUDGE BRIEANT

74 CRIM. 928

TITLE OF CASE	ATTORNEYS
THE UNITED STATES Filed:	For U. S.:
vs. 1/6/76	Jeffrey Harris, AUSA
WILLIAM SANGEMINO	264-6447
	For Defendant:

ABSTRACT OF COSTS	AMOUNT
08)	
Fine,	
Clerk,	
Marshal,	
Attorney,	
[illegible], 18	
[illegible] 371,201(c) &1623	
Consp. to defraud the U.S.(Ct.1)	
Public official accepting a bribe.(Ct.2)	
Perjury.(Ct.3)	
(Three Counts)	

CASH RECEIVED AND DISBURSED			
DATE	NAME	RECEIVED	DISBURSED

DATE	PROCEEDINGS
12-30-74	Filed indictment.
1-7-74	Deft.(atty. present) Pleads not guilty. Motions return[illegible] Bail fixed by the court at $10,000. P.R.B. secured by $1,000. cash or surety. Deft. to be photographed and fingerprinted. Case [illegible] Brieant, J. for all purposes. MacMahon, J.
10-8-74	Filed Notice of Appearance for the deft. by Atty Joel [illegible] St. Bklyn. NY 11242---TR 5-5316
10-7-74	Filed Appearance Bond in the sum of $10,000.00 secured by $1,000.00 cash. (Clerk. Name of surety-Robert M. Norman. Receipt #1392.

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
Oct 24-74	Filed Deft's Notice of Motion for Bill of Particulars, Inspection of Grand Jury Minutes and and for inspection ....ret Oct 31-74.		
10-25-74	Filed Stip between the Pltff & Deft that the time within which the Deft is required to make motions with respect to entitled indictment, is hereby extended to the 31st Day of October. SO ORDERED -BRIEANT, J.		
11-13-74	Filed Pltff's affdvt in opposition to Defts motion for a bill of Particulars 7 Discovery & Inspection.		
11-13-74	Filed Pltff's Memorandun of Law in opposition to Deft's request for a Bill of Particulars & Discovery.		
11-13-74	Filed MEMO ENDORSEMENT on Deft's Notice of Motion and Affdvt for Bill of Particulars & Inspection filed 10-14-74 -- The within motion has been disposed of in accordance with directions of the Court made at a hearing held this date. See Transcrip - SO ORDERED --BRIEANT, J. (N/M)		
12-24-74	Filed Pltff's Bill of Particulars.		
12-27-74	Filed Pltff's Notice of Readiness for Trial.		
1-6-75	Filed Defts Affdvt and Notice of Motion to Suppress Statements taken from the Deft and a further discovery and Inspection.		
1-6-75	Filed Defts Affdvt and Notice of Motion for a Further Bill of Particulars and Motion to Suppress Statements taken from Deft.		
1-9-75	Filed Pltff's affdvt in opposition to Defts motion for Deft's bill of particulars, further discovery and inspection		
Jan 6-75	Filed transcript of record of procedings, dated [illegible]		
2-18-75	Filed MEMORANDUM & ORDER in reference to Deft's motion dated 1-6-75 - The motion to suppress [illegible]		

74 CR [illegible] Docket [illegible] 74 CR 928 (CE

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
3-10-75	Filed Notice of Motion and Affdvt of Milton L. Platt, Counsel, Dept of Prob, City of NY, pursuant to Rule 45b to quash a subpoena. (entered in 75 CR 127)
3-10-75	Filed Movant's Memorandum re: the above motion. (entered in 75 CR 127)
3-17-75	Filed Deft's affdvt in opposition to the motion by the Dept. of Probation of the City of New York to quash a subpoena served upon them for certain records concerning on Dr. Nathan Lemler. (entered in 75 CR 127)
3-18-75	Filed Pltff's affdvt and Notice of Motion to quash a subpoena dated 2-25-75 addressed to the Federal Bureau of Investigation. (entered in 75 CR 127).
3-19-75	Filed MEMO ENDORSEMENT on Pltff's Affdvt & Notice of Motion dated 3-18-75. The within motion was heard this date and disposed of in accordance with the Court's directions on the record. See Transcrip -SO ORDERED--BRIEANT,J.
4-7-75	Filed Petition Notice of Motion of Denis Dillon, D.A., County of [illegible] for an order pursuant to Rule 12(b)(1) of the F.R.C.P. quashing the subpoena duces tecum issued in behalf of the Deft, with MEMO ENDORSEMENT. - The within motion is withdrawn, having been disposed of by agreement of Counsel. See Transcrip. SO ORDERED--BRIEANT,J (d/n 4-10-75) (entered in 75 CR 127).
4-8-75	Jury Trial begun on 8 and continued 9,10,11,14,15. as to Cts. 2 & 3.
4-8-75	Count 1 dismissed by the Court on consent of both sides.
4-18-75	Filed Government's Request to Charge. (Entered in 75 CR 127)
4-16-75	Trial cont'd.
4-17-75	Trial cont'd.
4-18-75	Trial cont'd & concluded. Jury verdict GUILTY on COUNTS 2 & 3. [illegible] Sentence adj'd to June 3, 1975. Bail cont'd.——BRIEANT,J.
4-25-75	Filed Pltff's Voir Dire requests.
4-23-75	Filed transcript of record of proceedings, dated Feb. 14, 1975
5-19-75	Filed transcript of record of proceedings, dated April 15, 16, 17, [illegible]
5-19-75	Filed transcript of record of proceedings, dated April 2, 3, [illegible]
5-19-75	Filed transcript of record of proceedings, dated Jan. 16, 1975
6-3-75	Sentence adj'd to June 17, 1975.——BRIEANT,J.
6-4-75	Filed Order that upon the annexed Stip & Affdvt of Michael B. Pollack, Esq., [illegible] hereby, ORDERED that Michael B. Pollack, Esq., [illegible] be substituted as attorney for the Deft, in place and stead of [illegible] for purposes of the appeal herein. —BRIEANT, J.
6-30-75	Filed Deft's motion for new trial with supporting [illegible]
7-9-75	Filed Gov't affdvt of Jeffrey Harris, A.U.S.A. [illegible] for a new trial pursuant to Rule 33, F.R.Cr.P., filed 6-30-75.
9-25-75	Filed Letter from Deft's Atty to Judge Brieant dated 7-14-75 [illegible] 827)
2-25-75	Filed Letter from Deft's atty to Brieant, J. [illegible]

DATE	PROCEEDINGS	Date Ord Judgment
9-25-75	Filed Memorandum & Order#43125.....Deft's motion for a new trial, pur. to Rule 33, FRCrP., is in all respects denied.....Brieant,J. mn	✓
10-16-75	Filed Deft's affdvt, being submitted in furtherance of the Deft's motion for a new trial based on newly-discovered evidence. (Entered on 75 CR 127)	
11-21-75	Filed Govt's Affdvt by J. Harris in opposition to deft's motion for an new trial. (Also dockted in 75 Cr 127)	
12-29-75	Filed Memorandum & Order#43149....Deft. Sangemino's motion for a new trial, pur. to Rule 33, FRCrP is denied....So Ordered.....Brieant,J. mn	
12-29-75	Filed Letter from H. Bl Pollack to Judge Brieant, dtd 9-12-75.	
12-29-75	Filed Judgment & Commitment Order-The deft is committed to the custody of Atty G. for a period of 4 Yrss on Ct 2,to run concurrently with the sentence imposed on 75 Cr 127 this date....Six(6) Months on ct 3, to run CONSECUTIVELY to the imposed on ct 2.....Deft continued on present bail until 1-7-76 at which time he is to post bail pending appeal fixed in teh amount of $10,000 2&3 secured by $1,000.00 cash or surety, and to cover indictment 75 Cr. 127....Brieant,J.	
1-5-76	Filed Notice of Appeal by deft of Judgment ent 12-29-75. Copy mailed on 1-6-76 to A.U.S.A. Harry Harris and deft c/o of U. S. Pollack Esq.	
1-19-76	Filed stipulation and order transmitting true copies of originally filed documents which are presently missing	
1-15-76	Filed stipulation and order transmitting exhibits to U.S.C.A.	

BEST COPY AVAILABLE

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JUDGE [illegible] 75 CRM 12

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Jeffrey Harris, AUSA, 791-0043
✓ WILLIAM GANGEMINO	
	For Defendant:

(08) STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk					
J.S. 3 mailed	Marshal					
Violation	Docket fee					
Title 18						
Sec. 371						
Consp. to defraud the U.S.						
(One Count)						

DATE	PROCEEDINGS
2-5-75	Filed Indictment. (Superseding 74Cr928)
2-14-75	Deft (Atty Joel H. Brettschneider) present, pleads NOT GUILTY - MacMAHON, J.
2-14-75	Filed Pltff's Memorandum of Law.
3-10-75	Filed Notice of Motion and Affdvt of Milton L. Platt, Counsel, Dept. of Investigation, City of NY, pursuant to Rule 45b to quash a subpoena. (filed in 74 CR 928)
3-10-75	Filed Movant's Memorandum re. the above motion. (filed in 74 CR 928)
3-17-75	Filed Deft's affdvt in opposition to the motion by the Dept. of Investigation of the City of New York to quash a subpoena directed to [illegible] records concerning one Dr. Nathan Leader. (filed in 74 CR 928).
3-18-75	Filed pltff's affdvt and Notice of Motion to quash a subpoena duces tecum addressed to the Federal Bureau of Investigation. (filed in CR 928)
3-12-75	Filed MEMO ENDORSEMENT on Pltff's Affdvt & Notice of Motion filed [illegible] The within motion was heard this [illegible]

1A

DATE	PROCEEDINGS
	/s/ Denis Dillon, D.A., County of Nassau.
4-7-75	Filed Govts Notice of Motion & Affdvt for an order pursuant to Rule 12(b)(1) of the F.R.C.P. quashing the subpoena duces tecum issued in behalf of the Deft. MEMO ENDORSEMENT - The within motion is withdrawn, having been disposed of by agreement of Counsel. (See transcript) SO ORDERED—BRIANT,J. (m/n 4-10-75) Filed in 74 CR 928.
4-8-75	Jury Trial began 4-8-75 and continued 9,10,11,14, 15. ---BRIANT,J.
4-18-75	Filed Government's Requests to Charge. (Filed in 74 CR 928).
4-16-75	Trial cont'd.
4-17-75	Trial cont'd.
4-18-75	Trial cont'd & concluded. Jury verdict GUILTY. P.S.I. ordered. Sentence adj'd to June 3, 1975. Bail cont'd.---BRIANT,J.
4-25-75	Filed Pltff's Voir Dire requests. (Filed in 74 CR 928)
4-23-75	Filed transcript of record of proceedings, dated Feb-14, 1975 (filed in 74CR 928)
6-3-75	Sentence adj'd to June 17, 1975.---BRIANT,J.
6-4-75	Filed order that upon the annexed Stip & Affdvt of Michael B. Pollack, Esq., it is hereby, ORDERED that Michale B. Plopack, Esq..(1345 Ave of Americas, NYC 10019) be substituted as attorney for the Deft. in place and stead of Joel H. Brettschneider, for the purposes of the appeal herein---BRIANT,J (Filed in 74 CR 928)
6-30-75	Filed Deft's motion for New Trial with supporting affdvt's and Memorandum of Law. (Filed in 74 CR 928).
7-3-75	Filed Gov't affdvt of Jeffrey Hassis, A.U.S.A., in opposition to Deft's motion for a new trial pursuant to Rule 33, F.R.Cr.P., filed 6-30-75. (Filed in 74 CR 928).
9-26-75	Filedd Letter from Deft's atty M. B. Pollock to Judge Brieant, Dtd 7-18-75. (fil in 74 CR 928)
9-26-75	Filed Letter from Deft's atty. to Judge Brieant dtd 8-20-75.(fld in 74 CR 928)
10-16-75	Filed Deft's affdvt, being submitted in furtherance of the Deft's motion for a new trial based on newly-discovered evidence. (Filed in 74 CR 928).
11-21-75	Filed Govt's Affdvt by J. Harris in opposition of deft to a new trial (Fil in 74
12-22-75	Filed ORDER-The deft. is committed to the custody of [illegible] to run concurrently with the sentence [illegible] Bail in 74 Cr 928 to cover this [illegible] .....Brieant,J.....

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By [signature]
Deputy Clerk

INDICTMENT 74 Cr. 928 (Filed September 30, 1974)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

WILLIAM SANGEMINO,

Defendant.

INDICTMENT

74 Cr. 928

INTRODUCTION

1. The defendant WILLIAM SANGEMINO, at all times relevant to this indictment, was on active duty as a Major in the United States Army.

2. The defendant WILLIAM SANGEMINO, at all times relevant to this indictment, was assigned to the staff of the New York Headquarters of the Selective Service System located at 26 Federal Plaza, New York, New York.

3. Co-conspirator Nathan Lemler, at all times relevant to this indictment was a principal officer and stockholder in Remedial Education Incorporated located principally at 123 Grove Street, Cedarhurst, New York.

4. At all times relevant to this indictment Selective Service Headquarters for New York City was located at 26 Federal Plaza, New York, New York and had jurisdiction over Selective Service Local Boards located in New York City.

EJK:sk

COUNT ONE

8a

The Grand Jury Charges:

1. From on or about January 1, 1968, up to and including July 1, 1972 in the Southern District of New York and elsewhere, WILLIAM SANGEMINO, the defendant, and Nathan Lemler, Marilyn Blicksilver, Myron R. Teitelbaum, Edward J. Resnick, Irving Resnick, Leonora Resnick, Josephine Petro, Pat Petro, Gerald Weiss, David Blank, Janice Zweibel, David Zweibel, Henry J. Wuerz, Jr., Richard Falcoff, Dorothy Paley, James Whelan, named as co-conspirators but not as defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with others to the Grand Jury known and unknown, to defraud the United States and its departments and agencies in connection with the performance of their lawful governmental functions by obstructing and hindering the Selective Service System in the fair, impartial and honest selection of men eligible for service in the Armed Forces of the United States pursuant to the laws and regulations relating to such service and by depriving the United States Army of the full, faithful and honest services of such eligible persons and persons already serving in the United States Army and by depriving the Selective Service System and the United States Army of the impartial, faithful, and honest services of the defendant WILLIAM SANGEMINO.

2. It was a part of said conspiracy to defraud that the defendant and his co-conspirators would and did agree to defraud the United States of its lawful rights:

(a) to have the business affairs of the Selective Service System conducted fairly, impartially and honestly without illegal collusion between an employee of the Selective Service System and persons subject to call under said system and other persons;

(b) to have the full and faithful services of men eligible for service in the Armed Forces of the United States;

(c) to have the full and faithful services of members of the Armed Forces of the United States;

(d) to have the defendant WILLIAM SANGEMINO free to perform properly, impartially and honestly his official functions unhindered and uninfluenced by the exertion on him of dishonest, unlawful and undue pressure and unhindered and uninfluenced by the offer and payment to him of any gratuities, bribes or other things of value.

3. It was further a part of said conspiracy to defraud that the defendant WILLIAM SANGEMINO, being a public official of the United States did directly and indirectly, corruptly ask, demand, exact, solicit, seek, accept and receive money in return for providing advice and for assisting persons to avoid or terminate service in the Armed Forces of the United States.

4. Among the means by which the defendant and his co-conspirators would carry out their agreed upon unlawful purposes were the following:

(a) Co-conspirator Nathan Lemler would and did solicit clients who wanted to enter graduate schools in medicine, law, dentistry or other disciplines.

(b) Many of these clients were eligible to be drafted into the Armed Forces of the United States. Lemler would and did exact fees from these clients ranging from $2,500 to $30,000 to place them in graduate school and/or to have them avoid service in the Armed Forces of the United States.

(c) After interviewing said clients Lemler would and did contact the defendant WILLIAM SANGEMINO and tell him of the client. Lemler and Sangemino would and did then agree on the best method to follow to have the client avoid service.

(d) One such method used by Lemler and Sangemino was to have the client fail to qualify physically for service. Sangemino would and did provide Lemler with his business card to give to the client. The client would and did then present the business card to certain persons at the Armed Forces Examining Station and would thereafter fail his physical examination.

(e) In other cases Sangemino and Lemler would and did agree to have a client disqualified due to psychiatric problems. Lemler would then contact co-conspirator Dr. Myron Teitelbaum. Dr. Teitelbaum would examine the client, sometimes seeing him only once or twice, and then would write a letter stating that the client was mentally unsuited for service in the Armed Forces.

(f) In cases where the client was already in the Armed Forces Sangemino and Lemler would and did secure fraudulent hardship discharges or transfers. Pursuant to agreement a dependant or close family member of the client would check into South Oaks Mental Hospital for short periods of time from six days to ten days. Thereafter documentation would be prepared and presented to the United States Army for either transfers or discharges. 11a

(g) Co-conspirator Nathan Lemler would and did pay a total of approximately $50,000 to the defendant WILLIAM SANGEMINO in return for the defendant's advice and assistance, as described above, in having said clients avoid or terminate service in the Armed Forces of the United States in approximately 400 cases.

OVERT ACTS

In furtherance of, and to effect the objects of the conspiracy, certain overt acts were committed by the defendant and his co-conspirators in the Southern District of New York, including the following:

1. During the summer of 1969 co-conspirator Nathan Lemler paid the defendant WILLIAM SANGEMINO approximately $1,000 at 26 Federal Plaza, New York, New York.

2. During the summer of 1969 co-conspirator Nathan Lemler paid the defendant WILLIAM SANGEMINO approximately $800 at 26 Federal Plaza, New York, New York.

3. In or about January or February, 1970 co-conspirator Nathan Lemler paid the defendant WILLIAM SANGEMINO approximately $2,500 at 26 Federal Plaza, New York, New York.

JK:sk

4. On or about January 26, 1971 the defendant WILLIAM SANGEMINO telephoned co-conspirator Nathan Lemler. 12a

5. On or about February 24, 1971 the defendant WILLIAM SANGEMINO telephoned co-conspirator Nathan Lemler in regard to co-conspirator Edward Resnick.

6. In or about February, 1971 co-conspirator Nathan Lemler paid the defendant WILLIAM SANGEMINO approximately $1,500 at 26 Federal Plaza, New York, New York.

7. On or about May 11, 1971 the defendant WILLIAM SANGEMINO telephoned co-conspirator Nathan Lemler.

8. In or about June, 1971 co-conspirator Nathan Lemler paid the defendant WILLIAM SANGEMINO approximately $1,500 at 26 Federal Plaza, New York, New York.

9. On or about July 20, 1971 the defendant WILLIAM SANGEMINO telephoned co-conspirator Nathan Lemler.

10. On or about December 20, 1971 the defendant WILLIAM SANGEMINO telephoned co-conspirator Nathan Lemler.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

From on or about October 1, 1969 up to and including July 31, 1972, in the Southern District of New York, WILLIAM SANGEMINO, the defendant, being a public official of the United States, to wit, a Major in the United States Army assigned to the Selective Service System, unlawfully, wilfully and knowingly did, directly and indirectly,

corruptly ask, demand exact, solicit, seek, accept, receive, and agree to receive things of value, to wit, approximately thirty thousand dollars ($30,000), for himself and for other persons in return for: (a) being influenced in his performance of official acts; (b) being influenced to commit and aid in committing, and to collude in, and allow, a fraud, and make opportunity for the commission of a fraud, on the United States; and (c) being induced to do and omit to do acts in violation of his official duties, to wit, in return for providing advice and for assisting certain persons to avoid or terminate service in the Armed Forces of the United States.

(Title 18, United States Code, Section 201(c))

COUNT THREE

The Grand Jury further charges:

1. On or about March 20, 1974, in the Southern District of New York, WILLIAM SANGEMINO, the defendant, having duly taken an oath as a witness that he would testify truthfully before a Grand Jury of the United States of America, duly impaneled and sworn in the United States District Court for the Southern District of New York and inquiring for that District, unlawfully, wilfully and knowingly and contrary to said oath did make false material declarations to said Grand Jury as set forth below.

2. At the time and place aforesaid, the Grand Jury was conducting an investigation, pursuant to Title 18, United States Code, Section 201 to determine whether employees of the Selective Service System and the

United States Army [illegible] corruptly asked, demanded, exacted, solicited, sought, accepted, received or agreed to receive things of value to influence the full and faithful service of members of the United States Army and to influence the fair, impartial and honest selection of men eligible for service in the United States Armed Forces.

3. It was material to the Grand Jury's investigation to determine whether the defendant had ever directly or indirectly, solicited or received any money or other thing of value from Nathan Lemler or others.

4. At the time and place aforesaid, WILLIAM SANGEMINO, the defendant, appearing as a witness under oath did testify falsely with respect to the aforesaid material matters as set forth below:

Q: Did you ever in your job receive any remuneration for helping Selective Service applicants, any money or other things of value?

A: No, I got $50 for a speech once.

Q: You did not receive any money at any time for helping a Selective Service applicant?

A: No, I did not receive any money at any time for that.

Q: Did you ever assist anyone who was already on active duty in getting a discharge?

A: Several times.

Q. Did you ever take any money for that?

A: No, I did not.

Q: Did you ever have any dealings with Dr. Nathan Lemler?

A: Yes

Q: Did you ever take any money from him?

A: No

Q: For any reason?

A: No, not for any reason.

Q: I would also like to advise you that if you wilfully give a false answer to any of my questions that constitutes perjury and you can be prosecuted for that.

A: Yes, but he never offered me any money to do anything illegal.

Q: Did you ever take any money period?

A: No, I never took any money, period.

Q: From Dr. Nathan Lemler?

A: No I did not. I mean I see what you are getting at, but he didn't have to give me any money. That is my job to do what I did for him.

* * * * * * * * *

Q: Did you in fact assist Dr. Nathan Lemler with some of his clients in their selective service problems?

A: Yes I did.

Q: Did you ever take any money for that?

A: No, I did not.

(Title 18, United States Code, Section 1623.)

Foreman

PAUL J. CURRAN
United States Attorney

JH:mcc

INDICTMENT 75 Cr. 127 (Filed February 5, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA :

-v- : INDICTMENT

WILLIAM SANGEMINO, : 75 Cr. [illegible]

Defendant. :

- - - - - - - - - - - - - - - - - - - x

INTRODUCTION

1. The defendant WILLIAM SANGEMINO, at all times relevant to this indictment, was on active duty as a Major in the United States Army.

2. The defendant WILLIAM SANGEMINO, at all times relevant to this indictment, was assigned to the staff of the New York Headquarters of the Selective Service System located at 26 Federal Plaza, New York, New York.

3. Co-conspirator Nathan Lemler, at all times relevant to this indictment was a principal officer and stockholder in Remedial Education Incorporated located principally at 123 Grove Street, Cedarhurst, New York.

4. At all times relevant to this indictment Selective Service Headquarters for New York City was located at 26 Federal Plaza, New York, New York and had jurisdiction over Selective Service Local Boards located in New York City.

COUNT ONE

The Grand Jury charges:

1. From on or about January 1, 1968, up to and including July 1, 1972 in the Southern District of New York and elsewhere, WILLIAM SANGEMINO, the defendant,

and Nathan Lemler, Marilyn Blicksilver, Myrna R. Teitelbaum, Edward J. Resnick, Irving Resnick, Leonora Resnick, Josephine Petro, Pat Petro, Gerald Weiss, David Blank, Janice Zweibel David Zweibel, Henry J. Wuerz, Jr., Richard Falcoff, Dorothy Paley, James Whelan, named as co-conspirators but not as defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with others to the Grand Jury known and unknown, to defraud the United States and its departments and agencies in connection with the performance of their lawful governmental functions by obstructing and hindering the Selective Service System in the fair, impartial and honest selection of men eligible for service in the armed forces of the United States pursuant to the laws and regulations relating to such service and by depriving the United States Army of the full, faithful and honest services of such eligible persons and persons already serving in the United States Army and by depriving the Selective Service System and the United States Army of the impartial, faithful and honest services of the defendant WILLIAM SANGEMINO.

2. It was a part of said conspiracy to defraud that the defendant and his co-conspirators would and did agree to defraud the United States of its lawful rights:

(a) to have the business affairs of the Selective Service System conducted fairly, impartially and honestly without illegal collusion between an employee of the Selective Service System and persons subject to call under said system and other persons;

(b) to have the full and faithful services of men eligible for service in the Armed Forces of the United States;

(c) to have the full and faithful services of members of the Armed Forces of the United States; 18a

(d) to have the defendant WILLIAM SANGEMINO free to perform properly, impartially and honestly his official functions unhindered and uninfluenced by the exertion on him of dishonest, unlawful and undue pressure and unhindered and uninfluenced by the offer and payment to him of any gratuities, bribes or other things of value.

3. It was further a part of said conspiracy to defraud that the defendant WILLIAM SANGEMINO, being a public official of the United States did directly and indirectly, corruptly ask, demand, exact, solicit, seek, accept and receive money in return for providing advice and for assisting persons to avoid or terminate service in the Armed Forces of the United States.

4. Among the means by which the defendant and his co-conspirators would carry out their agreed upon unlawful purposes were the following:

(a) Co-conspirator Nathan Lemler would and did solicit clients who wanted to enter graduate schools in medicine, law, dentistry or other disciplines.

(b) Many of these clients were eligible to be drafted into the Armed Forces of the United States. Lemler would and did exact fees from these clients ranging from $2,500 to $30,000 to place them in graduate school and/or to have them avoid service in the Armed Forces of the United States.

(c) After interviewing said clients Lemler would and did contact the defendant WILLIAM SANGEMINO and tell him of the client. Lemler and Sangemino would and did

then agree on the best method to follow to have the client avoid service.

(d) One such method used by Lemler and Sangemino was to have the client fail to qualify physically for service. Sangemino would and did provide Lemler with his business card to give to the client. The client would and did then present the business card to certain persons at the Armed Forces Examining Station and would thereafter fail his physical examination.

(e) In other cases Sangemino and Lemler would and did agree to have a client disqualified due to psychiatric problems. Lemler would then contact co-conspirator Dr. Myron Teitelbaum. Dr. Teitelbaum would examine the client, sometimes seeing him only once or twice, and then would write a letter stating that the client was mentally unsuited for service in the Armed Forces.

(f) In cases where the client was already in the Armed Forces Sangemino and Lemler would and did secure fraudulent hardship discharges or transfers. Pursuant to agreement a dependant or close family member of the client would check into South Oaks Mental Hospital for short periods of time from approximately six days to fourteen days. Thereafter documentation would be prepared and presented to the United States Army for either transfers or discharges.

(g) Co-conspirator Nathan Lemler would and did pay a total of approximately $50,000 to the defendant WILLIAM SANGEMINO in return for the defendant's advice and assistance, as described above, in having said clients avoid or terminate service in the Armed Forces of the United States.

JM:sk

OVERT ACTS

In furtherance of, and to effect the objects of the conspiracy, certain overt acts were committed by the defendant and his co-conspirators in the Southern District of New York, including the following:

1. During the summer of 1969 co-conspirator Nathan Lemler paid the defendant WILLIAM SANGEMINO approximately $1,000 at 26 Federal Plaza, New York, New York.

2. On or about July 7th or 8th, 1969 co-conspirator Nathan Lemler paid the defendant WILLIAM SANGEMINO approximately $800 at 26 Federal Plaza, New York, New York.

3. In or about the last week of September, 1969 or the first week of October, 1969 co-conspirator Nathan Lemler paid the defendant WILLIAM SANGEMINO approximately $2,500 at 26 Federal Plaza, New York, New York.

4. On or about October 21, 1970 co-conspirator Nathan Lemler entered 26 Federal Plaza, New York, New York.

5. In or about December, 1970 and January, 1971 co-conspirator Nathan Lemler paid the defendant WILLIAM SANGEMINO approximately $1,500 at 26 Federal Plaza, New York, New York in two payments.

6. On or about January 26, 1971 the defendant WILLIAM SANGEMINO telephoned co-conspirator Nathan Lemler.

7. On or about February 24, 1971 the defendant WILLIAM SANGEMINO telephoned co-conspirator Nathan Lemler in regard to co-conspirator Edward Kasnick.

8. On or about March 31, 1971 co-conspirator Nathan Lemler entered 26 Federal Plaza, New York, New York.

9. On or about May 11, 1971 the defendant WILLIAM SANGEMINO telephoned co-conspirator Nathan Lemler.

JH:sk

10. On or about June 15, 1971 Charles Mofschowitz entered 26 Federal Plaza, New York, New York.

11. On or about July 20, 1971 the defendant WILLIAM SANGEMINO telephoned co-conspirator Nathan Lemler.

12. On or about October 20, 1971 co-conspirators Marilyn Blicksilver and Nathan Lemler entered 26 Federal Plaza, New York, New York.

13. On or about December 3, 1971 co-conspirator Nathan Lemler entered 26 Federal Plaza, New York, New York.

14. On or about December 20, 1971 the defendant WILLIAM SANGEMINO telephoned co-conspirator Nathan Lemler.

(Title 18, United States Code, Section 371.)

Foreman

PAUL J. CURRAN
United States Attorney

JH:sk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA

-v-

WILLIAM SANGEMINO,

Defendant.

----------x

BILL OF PARTICULARS

74 Cr. 928 (CLB)

S I R S:

The Government for its Bill of Particulars states as follows:

1. Particularization of the $50,000 mentioned in paragraph 40 of the indictment: This represents an approximation of the amount of money received by William Sangemino during the period from early 1968 through January or February of 1972. The money was paid periodically to Sangemino averaging approximately two payments per month. All but approximately two of these payments were paid to Sangemino at 26 Federal Plaza, New York, New York. Of the payments made to Sangemino at 26 Federal Plaza, all payments were made in either Sangemino's office, at two different locations as the office moved floors during this period, or the men's room on the floor where Sangemino's office was located. The approximately two other payments were made to Sangemino at an Italian restaurant located between Broadway and Church Street several blocks south of 26 Federal Plaza. All payments to Sangemino were made on weekdays between approximately 10 o'clock A.M. and 2 o'clock P.M.

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2. Overt Act #1: Paid to Sangemino by Nathan Lemler in Sangemino's office at 26 Federal Plaza on a weekday toward the middle of the week. Payment was made in 50 and 100 dollar bills. Only Sangemino and Lemler were present.

3. Overt Act #2: Paid to Sangemino by Nathan Lemler on approximately July 7th or 8th, 1969 at Sangemino's office at 26 Federal Plaza. Payments were made in 50 and 100 dollar bills. Only Sangemino and Lemler were present.

4. Overt Act #3: Paid to Sangemino by Nathan Lemler during the last week in September 1969 or the first week in October 1969 in the men's room on the floor where Sangemino's office was located at 26 Federal Plaza. Payment was made in 50 and 100 dollar bills. Only Sangemino and Lemler were present.

5. Overt Act #6: Paid to Sangemino by Nathan Lemler in two payments. The first payment shortly before Christmas 1970 of approximately $1,000. The second payment shortly after January 1, 1971 of the remainder. Both payments were made to Sangemino in the men's room on the floor where his office was located at 26 Federal Plaza. Payment was made in 50 and 100 dollar bills. Only Sangemino and Lemler were present.

6. Overt Act #8: Paid to Sangemino by Nathan Lemler in June 1971, at 26 Federal Plaza. Paid either in Sangemino's office or the men's room on the same floor. Payment was made in 50 and 100 dollar bills. Only Lemler and Sangemino were present.

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7. The clients of Lesler's whose names the Government anticipates will arise during the Government's case are as follows:

a: Max Schwartz

b: Jeffrey Allen

c: Richard Falcoff

d: Edward J. Rosnick

e: David Kimbel

f: Scott Rothstein

g: Charles Givens

h: Joseph Petro

i: Robert Fischer

j: James Whelan

k: Robert Aquilina

l: Henry Mercz

m: Gerald Wolfe

n: Alan Rubitz

o: Jonathan Cameron

p: John Cassagrande

q: George Crisona, Jr.

r: Peter Center

s: first name unknown Grossberg

t: Mark Hurwitz

u: Bruce Silver

v: Stephan Handler

w: Donald Chester

x: Mark Lakritz

y: first name unknown Lisa

z: first name unknown Morelli

JH:sk

8. Of the names listed in paragraph 7 above the following involved South Oaks Hospital: Weiss, Petro and Zweibel.

9. The Government charges the following responses were false: (The portion of the response in caps is charged as false where only a portion is false. The responses follow the transcript as set out in the indictment.)

A: NO, I got $50 for a speech once.

A: NO, I DID NOT RECEIVE ANY MONEY AT ANY TIME FOR THAT.

A: NO, I DID NOT.

A: NO.

A: NO, NOT FOR ANY REASON.

A: Yes, BUT HE NEVER GAVE ME ANY MONEY TO DO ANYTHING ILLEGAL.

A: NO, I NEVER TOOK ANY MONEY PERIOD.

A: NO, I DID NOT. I mean I see what you are getting at, BUT HE DIDN'T HAVE TO GIVE ME ANY MONEY. THAT IS MY JOB TO DO WHAT I DID FOR HIM.

A: NO, I DID NOT.

Dated: New York, New York

December 24, 1974

JH:sk

Yours, etc.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

By: /s/
JEFFREY HARRIS
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse
Foley Square
New York, New York 10007
Telephone: (212) 791-0043

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THE COURT: What else do you need with respect to count 1?

MR. BRETTSCHNEIDER: Well, why, with respect to count 1, we had asked for the acts that they alleged this defendant did other than receive the money.

THE COURT: If he entered into an agreement and received the money, that is good enough, isn't it?

MR. BRETTSCHNEIDER: There is nothing --

THE COURT: He didn't receive the money for giving Mr. Lemler's weight, did he?

MR. BRETTSCHNEIDER: No.

THE COURT: Or a bet on the sweepstakes or something.

MR. BRETTSCHNEIDER: True. But there is no claim as to what they claim is the conspiracy to deprive the Government of the fair and honest services.

THE COURT: I think that is quite clear. It is pleaded here. I think thatis pleaded here with sufficient specificity.

It seems to me you might be required to specify the clients from whom these fees were exacted. Is there any objection in doing that? Why shouldn't that be set forth ?

MR. HARRIS: No, your Honor, we will specify a

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list as complete as we have.

THE COURT: You can specify who entered these graduate schools or who entered these psychiatric facilities or who failed their physical examinations as a result of the activities or the alleged activities of the defendant.

I should think that should be disclosed.

Isn't that going to be adequate for you? What else do you want?

MR. BRETTSCHNEIDER: Well, that is part of it, Judge.

THE COURT: Give me the rest of it so I can rule on it.

MR. BRETTSCHNEIDER: Judge, the indictment, of course, in count 1 is a conspiracy to defraud. We asked for all the elements in the conspiracy to defraud.

THE COURT: I am not making that kind of a silly direction, Mr. Brettschneider. If there is data that needs to be particularized to allow your client to make a meaningful defense or to reach the conclusion as to whether or not the Government has the goods or not, that I will direct.

I think you should have the names of the persons, I think you should have as much particularization as is

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reasonable with respect to the payments made to your client or allegedly made to him or the clients from whom Lemler received the money to effect their Selective Service status.

If you can point out something else that you need to make a meaningful defense, then I will direct that, also.

MR. BRETTSCHNEIDER: Well, Judge, in respect to one of the items, the U. S. Attorney in count 1 G, alleges that co-conspirator Norman Lemler would and did pay a total of $50,000 to the defendant, William Sangemino, in return for the defendant's advice and assistance as described above in having said clients avoid or terminate service in the Armed Forces of the United States in approximately four hundred cases.

This is going to be read to the jury --

THE COURT: Absolutely.

MR. BRETTSCHNEIDER: And we would like to know if they say 400 cases the names of those cases so that we at least could prepare or present some more evidence that such a thing didn't happen.

How could we possibly determine with four million men who are eligible under the draft to pick out which ones they are referring to without knowing them?

THE COURT: It seems to me that the names of the

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* * *

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May I have permission of the Court to retape these. All you do is listen and put the tape on.

THE COURT: Any objection to that?

MR. HARRIS: No.

THE COURT: Do it within the next two weeks, don't sleep on your rights in this discovery.

All right, what else?

MR. BRETTSCHNEIDER: Once again, in count 3, Judge -- rather, going back to count 2, we have asked for the names of these people whom allegedly work was done through the Selective Service or improper work was done.

We asked for the names, the addresses and the Selective Service number so that we may subpoena these files into court. Without knowing the names of all these cases and the numbers which we presume Dr. Lemler or the U. S. Attorney has examined, we have no way of knowing what files to subpoena.

THE COURT: Any files the Government relies on ought to be present on the day of the trial.

There is no problem with that, is there?

MR. HARRIS: No, your Honor.

THE COURT: You are not going to confront a jury when you don't have the file, are you?

MR. HARRIS: Well, in certain cases Selective

Service files are destroyed periodically and are no longer available, but we have consented to allow discovery and inspection of any Selective Service files in the U. S. Attorney's possession which we intend to use.

THE COURT: Or pertaining to persons with respect to whom you intend to charge the defendant with wrong doing?

MR. HARRIS: That's correct. That's correct.

THE COURT: Whether you use the file or not.

MR. HARRIS: That's correct.

I might pointout here peculiarly in this case the defendant has easier access to Selective Service files than the United States Attorney.

THE COURT: If you are making a concession there is no use in pointing out anything like that. I will go by the concession.

MR. BRETTSCHNEIDER: If the Court please, we have no files, we have no records --

THE COURT: I haven't said you did. He has agreed to disclose those files pertaining to the cases which the Government claims --

MR. BRETTSCHNEIDER: Is this going back to the 400 files he is reading in the indictment?

THE COURT: Any cases he intends to elicit on the trial. He doesn't have to prove 400 cases on the trial.

In fact, I won't let him, because I would be here three weeks. This is not going to take that long, because the gravity of 400 or 40 isn't that distinct.

MR. BRETTSCHNEIDER: It would make a big difference, Judge, if you say 400 in an opening argument to a jury and I don't have a right to call every one of those cases in as a defense to show that nothing was ever done illegally in any one of those files.

THE COURT: I am not going to let you, so forget it, and I am not going to permit the Government to try 400 cases and I will instruct the jury that the Government is not being permitted to bring in four hundred separate counts under the guise of one count.

They ought to take a representative number of files that they think show wrongdoing.

As far as I can see this indictment, if they prove one, it is enough for a conviction. I am not going to try 400 cases here.

MR. HARRIS: Your Honor, just to let the Court know what the Government's intentions are, that is precisely what we had intended, to chose representative cases.

THE COURT: Well, I am not going to try 400 cases. I expect to try this case. There are a lot of other cases in this courthouse.

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MR. HARRIS: Your Honor, the Government --

THE COURT: And I will instruct the jury that they are not to speculate about the other 380 or whatever they are.

MR. HARRIS: The Government had in mind, your Honor, five to ten cases.

THE COURT: Well, I think that is more than enough. If need be, I wouldn't read the indictment or I won't read that part of it.

MR. BRETTSCHNEIDER: Judge, we have also asked for the names and addresses of the clients of Mr. Lemler so that we may -- those that they intend to bring, they may produce those records or at least attempt to ascertain those records of the man in Selective Service if there is --

THE COURT: I have already made a direction as to the Selective Service files and that is my direction.

What else is left open, gentlemen?

MR. BRETTSCHNEIDER: Judge, with respect to count 3 of testifying untruthfully, we have asked for what portion of the testimony elicited here is not true and what, in fact, the U. S. Government claims to be true.

MR. HARRIS: Your Honor, the Government has consented to the first part of that, namely, to specify, and I imagine the easiest way is to underline in the copy of

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THE COURT: Any rule 16 statements he certainly should have.

MR. HARRIS: The Government has consented in papers to provide this. Why see why --

MR. BRETTSCHNEIDER: Further, on discovery and inspection, I have seen a letter written by Dr. Lemler to the Nassau County Judge who had sentenced him, also indicated that the witness is a pathological liar, but he wrote a letter in which he says the documents pertaining to this case or the records are in the possession of the U. S. Attorney. These are the records from which I presume he testified. This letter says --

THE COURT: Forget the letter. What is your application?

MR.BRETTSCHNEIDER: I would like to examine the records and the documents of Dr. Lemler pertaining to the notations made therein with respect to this case.

THE COURT: So do I, but I don't see any basis to allow that. That is offered by the Percival case. Even if Lemler is a co-conspirator, you can't elicit his statement under rule 16. That is the Percival case in the Second Circuit.

I wish you wouldn't come in here with things that have no foundation.

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MR. BRETTSCHNEIDER: Of course, I believe your Honor has ruled that I am permitted to examine all the tapes, any tapes that were made --

THE COURT: I understand that was consented to.

MR. HARRIS: That's correct.

THE COURT: Yes.

MR. BRETTSCHNEIDER: I have nothing further, your Honor.

THE COURT: All right.

The motion is denied except to the extent the direction for disclosure has been made by the Court on this transcript and that is to be complied with promptly, Mr. Harris. I am going to give you a date to come back in January to set a trial date.

Try to deal directly and fairly with each other, gentlemen, so you don't confront me with academic questions. I have told you I am not going to try 400 cases so let's get this case in shape where a meaningful presentation can be made and a meaningful defense can be made. Nobody is going to take advantage of that situation with the jury, neither the Government nor the defendant.

I am simply going to tell the jury that they are to disregard the 400 figure or perhaps I won't even read it to them at all. But you are not coming in here

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with 400 cases and neither is the defendant.

Mr. HARRIS: Your Honor, the Government has no intention to do that.

THE COURT: I hope not. I don't know why you put it in the indictment.

MR. HARRIS: Well, because, your Honor, it means --

THE COURT: I know. It doesn't matter, it is done.

How about the 10th of January at 9:30 a.m.

MR. BRETTSCHNEIDER: Fine, your Honor.

THE COURT: At that time I will give you a trial date.

MR. BRETTSCHNEIDER: Judge, may I ask about the 10th, because I know that sometimes the holiday, which is Lincolns Birthday --

THE COURT: In January?

MR. BRETTSCHNEIDER: January 10th? I'm sorry, Judge.

THE COURT: January 10th.

All right. Defendant is continued on his existing bail arrangements and is to be here on January 10th at 9:30 in whatever courtroom I have. I don't know precisely where I will be, but you get here a little earlier and you can find out.

(Adjourned.)

which are now, I understand, in the possession of the United States Attorney which have a listing of all people who had entered 26 Federal Plaza and who left 26 Federal Plaza.

Now, for the defendant to prepare a defense as to when these payments were made, we would require the information as to who they say these payments were made to and when during this four-year period of the conspiracy, so we may look at the records. To sit in court after the witness testifies, to go through 27 volumes each time we learn of a name will create, really, a great burden upon the defendant.

THE COURT: You have been given the names, haven't you?

MR. BRETTSCHNEIDER: No, we have not.

THE COURT: Of the persons who paid?

MR. HARRIS: Your Honor, last time we were in court, Mr. Brettschneider asked for the names of the clients and at that time you remember there was some discussion about the number of these clients.

By agreement between himself and myself, I agreed we would give him the names only of people who would come up at trial, so it won't burden either of us with a useless list of names.

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That is provided in the bill of particulars in Paragraph 7.

THE COURT: You see, I have sent for the original bill. It is down in the docketing section. Maybe you would like to hand up a copy of the bill as you served it.

MR. BRETTSCHNEIDER: Judge, if I may --

THE COURT: It is on its way upstairs.

MR. BRETTSCHNEIDER: If I may be permitted to continue --

THE COURT: Yes, but let's get down to this. They are limiting themselves to certain named persons whom they offer to prove bribed the defendant. Isn't that what we are being told here?

MR. BRETTSCHNEIDER: No, Judge. I believe that the names given are the names that will come up of Selective Service files which will be involved in this, not that these people in any way bribed the defendant.

Now, what I submit to the Court --

THE COURT: Somebody else acting for them did? Is that the contention, Mr. Harris?

MR. BRETTSCHNEIDER: I assume that is what the contention is or someone made some payments.

THE COURT: Let's find out. Let's not operate

on assumptions.

Is it claimed by the Government that these bribes were paid within the building of 26 Federal Plaza?

MR. HARRIS: Yes, it is, your Honor.

THE COURT: Well, then, what is the difficulty about disclosing who paid?

MR. HARRIS: Your Honor, until two minutes ago there has never been a request for such a disclosure. It is nowhere in the papers.

THE COURT: That is certainly the first thing you would think anyone would ask for.

MR. HARRIS: You certainly would, but it hasn't been up until this morning.

THE COURT: I don't understand this log. I have gone over there. Is that just an off-hours log like they have in this building?

MR. BRETTSCHNEIDER: No, Judge. May I explain this?

In 1969 there was an explosion in 26 Federal Plaza as a result, I assume, of some action on the part of the Government with relation to the military.

After that happened, security-wise everybody in this building had to sign in for a period of time, so that they have a record of everybody who entered the

building.

THE COURT: I think Mr. Harris should give you the names of the persons whom the Government contends made payments within that building to the defendant in furtherance of the bribe and which they will introduce at trial. There is no problem over that, is there?

MR. HARRIS: No, your Honor.

THE COURT: And then, if you want to find out when those people attended the building, you may, from this register, to the extent the register is accurate.

Have you checked this register for these people, Mr. Harris?

MR. HARRIS: Yes, your Honor.

THE COURT: All right.

Why don't you save Mr. Brettschneider's time and tell him the results of your search? He is not going to look through these volumes, I don't believe.

MR. HARRIS: He has made a motion to look through them and we have consented to that.

THE COURT: All right. But he doesn't look with any success until he knows what names to look for.

MR. HARRIS: Your Honor, our position is that we are more than willing to do that. As I said, no demand has ever been made. This morning is a complete

new set of demands than what appears In his motion papers.

MR. BRETTSCHNEIDER: Judge, the first time I learned about this, with all due respect to the Government --

THE COURT: Let's not get into an argument over that. You are not estopped at this point, although, really, I would like to have you complete your discovery as fast as you can because you want to get this case in and try it.

MR. BRETTSCHNEIDER: Yes, Judge.

THE COURT: I am not holding it against you or your client that you failed to ask for it. Mr. Harris should supply it. I will direct it be supplied. Then you can check the names with the volumes.

MR. BRETTSCHNEIDER: And if possible, Judge, the dates or approximate dates of when they were supposedly paid?

THE COURT: To the extent the Government knows it, but, you see, I don't want this to be a source of surprise if the fellow testifies to a different date. The volumes are there to look and you can see when he was there.

Do the best you can on particularizing the time.

* * *

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indictment.

THE COURT: They interviewed the man without his attorney.

MR. BRETTSCHNEIDER: They had a co-conspirator wired after the indictment without advising him of his rights, and they said that was not proper.

THE COURT: Let me see the transcript we are talking about.

MR. HARRIS: Your Honor, I don't have the transcripts in court with me of the tape recordings. I can tell you that there are transcripts. I can provide them to the Court at any time the Court pleases.

THE COURT: It is a little difficult to deal with this matter if I don't have before me what we are talking about.

What is your response to the point on the transcripts?

MR. HARRIS: Well, your Honor, my response is this is the normal kind of case where tapes are involved. There was an approach by someone who had decided to cooperate with the Government in engaging a potential target of an investigation in conversation, and it was recorded.

THE COURT: After he had been before the grand jur

MR. HARRIS: After he had been before the grand jur

Now, I do have the grand jury transcript here, and I can tell you that he was advised of his rights in the grand jury three times. He was told that there was a substantial likelihood he would be indicted by this grand jury and that he was the target. There is absolutely no legal basis for suppression at all, even assuming, arguendo, everything that is included In the motion papers of the defendant here.

THE COURT: I think you ought to give the Court the grand jury testimony and the transcript of the recorded conversation so that I could read them against the background of the Messiah case. I don't want to decide that without looking at these things.

MR. BRETTSCHNEIDER: Judge, may I refer --

MR. HARRIS: I will provide them to the Court.

MR. BRETTSCHNEIDER: Judge, may I refer that there is another case. I don't want to mislead the Court. United States versus Hayles. I don't have the exact determination now, but I can get it for you, which is a Fifth Circuit case which held before indictment, they differentiated between them -- I appreciate that case --

THE COURT: Well, I don't understand, from what you tell me there is nothing relevant about the conversation anyway.

MR. BRETTSCHNEIDER: Well, it is, if you take the entire conversation. An example of this would be, Mr. Lemler says, "You know, I fixed certain cases. Do you remember the case of so-and-so?" And Major Sangemino is alleged to have said, "Well, I don't remember any such case."

But if you take all of this in a conversation, it's like a programmed conversation.

THE COURT: But the question is, does it have any probative effect in the trial? Are you intending to offer these tapes?

MR. HARRIS: The Government is, yes, your Honor.

THE COURT: As part of your case in chief?

MR. HARRIS: Yes, part of the direct case.

THE COURT: Only if he takes the stand.

MR. HARRIS: No, as part of the case in chief.

THE COURT: Well, I think you had better give me a short memorandum on this and make available the grand jury testimony and the tapes.

Now, is there anything else I need to know to rule on this?

MR. BRETTSCHNEIDER: Yes, Judge, one of the questions --

THE COURT: Stick to the tapes.

MR. BRETTSCHNEIDER: Yes. On the tapes, one of the questions I have, and I don't know now, is whether Lemler, who was an unindicted co-conspirator, was actually an agent of the Government during the entire time, so that perhaps the Miranda warnings may have been required after he testified in the grand jury.

THE COURT: Miranda is based on custody. You will have to get under some other case.

MR. BRETTSCHNEIDER: Well, Messiah said custody wasn't necessary.

THE COURT: I will have to review it. I will take a very short memorandum from both sides, if you wish.

How soon can you give it to me? Is there any other relevant fact that the Court has to know to rule on these transcripts?

MR. BRETTSCHNEIDER: No, Judge, just a few cases that I have cited to you, because a memorandum would be of no value because I have no further information.

THE COURT: Then write me a letter and give me the full names of the cases and citations.

MR. BRETTSCHNEIDER: Your Honor, I think I have a copy of one. May I give it to you?

THE COURT: Sure.

* * *

* * *

I fixed the case," and his saying, "No, you didn't," but what is the value of that testimony as against the possible prejudice that could arise from this conversation? Because I --

THE COURT: You know Judge Hand made the famous statement that all evidence is prejudicial, all evidence.

MR. BRETTSCHNEIDER: I bow to superwisdom.

THE COURT: All right, I will look at that aspect of it about whether it is proper to take the tape.

Now, have you finished telling me about this third tape?

MR. HARRIS: Yes, your Honor.

THE COURT: This was done at the behest of the Government?

MR. HARRIS: Absolutely.

THE COURT: By Mr. Lemler.

MR. HARRIS: That's correct.

THE COURT: After he had been promised that he would be named as an undicted co-conspirator and not indicted?

MR. HARRIS: Long, long after, after that occurred, yes, your Honor.

THE COURT: All right.

Was he being paid by the Government?

MR. HARRIS: No, he was not.

THE COURT: All right.

Any facts that you want to call to the attention of the Court that I don't have now?

MR. BRETTSCHNEIDER: No, Judge. As I indicated, I do have a squib out of the papers on that Hayles case to save the Court --

THE COURT: Hand it up. You understand with these things sometimes we go through a great deal of effort and then we find that something that we suppress is going to come back in in cross-examination, under the Harris against New York doctrine, or it comes in as rebuttal testimony in a case, so if it isn't important, don't --

MR. BRETTSCHNEIDER: I think it is, Judge.

THE COURT: All right. I will take a submission on it. I will take it under advisement.

Now, what else do you have?

MR. BRETTSCHNEIDER: Nothing, Judge, except the fact that we have now agreed that the United States Attorney will furnish me with the names of all those persons who allegedly paid money to him so I can look it up in the volumes.

THE COURT: All right. How long will it take

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produce them in court or in some manner so we can examine them so as to prepare for any allegations made therein.

We were shown, at least my client would consent was shown 4 out of the 24. Now, we don't have the files, the government has all the files.

THE COURT: All he has to show are those that he is relying on at trial.

MR. BRETT SCHNEIDER: They are mentioned or there is reference to all the other cases which we have not seen. I don't know what happened to those files, they have always been in the possession of the government and if the government has destroyed them or in some manner disposed of them, I don't think that the government should be allowed or be permitted to allude to those items because they can't establish anything with it.

MR. HARRIS: Your Honor, first of all, I have shown the defendant himself who has come over here to look at them all the files which are going to be used in the trial that United States Attorney's office has.

THE COURT: But his counsel is also entitled to see anything that he shows to him. Why weren't you there?

MR. HARRIS: That was his choice.

MR. BRETT SCHNEIDER: I didn't object to the 4 files. What I say to the court is that they are going to

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make reference to 20 more files other than those.

THE COURT: I understand he wasn't going to.

MR. BRETT SCHNEIDER: He is saying that he is going to do it.

MR. HARRIS: Your Honor, there will be testimony concerning other named individuals. The names provided by the government that we have shown to the defense is every file in such category and these are the files that would be used at trial and they are the only files United States Attorney has.

THE COURT: These were the four persons who purchased exoneration from military duty?

MR. HARRIS: That is correct.

THE COURT: Why do you care about the other 20?

MR. HARRIS: Your Honor, only that Mr. Lemler in his testimony, these names will come up.

THE COURT: If they impeach Lemler which they have a right to do or attempt to do, every name he brings up is a fertile field for cross-examination and he wants to look at those files.

MR. HARRIS: In my bill of particulars, my position is I would rather err on the side of giving him too much rather than too little.

THE COURT: If you want to subpoena the other files

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you may. I will sign a subpoena against any Draft Board-- would you let me finish -- of any files of any names that the government has particularized and intends to use at trial, because otherwise how can they cross-examine? He is going to name those names. These are the persons whose draft status was fixed by himself and this defendant for money. Is that the testimony?

MR. HARRIS: That is correct.

THE COURT: How can they plan to meet that?

MR. HARRIS: Let me tell you that the government is not attempting to be uncooperative. The defendant himself will tell you that he saw the files of the Selective Service and the defendant knows better than I that they are destroyed when a person reaches his 26th birthday. The fact of the matter is that they are simply no longer in existence.

THE COURT: You can tell Mr. Brett Schneider that, can't you?

MR. HARRIS: I told him that. I told his client that.

THE COURT: Show him then what you have available.

MR. HARRIS: Absolutely.

MR. BRETT SCHNEIDER: I move that I be provided with those by the government.

THE COURT: The motion is denied. That is the

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material.

MR. BRETT SCHNEIDER: If I may just show you one in the case of a registrant by the name of Schwartz. He was never in the United States. The records show that in 1967 a letter was sent which he was required to do because he was a non-resident of the United States and the Local Board would send it to the regular board. After 1967 this gentleman, before they ever knew about him or anything else and Mr. Sangemino never had anything to do with this gentleman and when the time came for this gentleman to be called he had already gone that year of eligibility called the criteria year and he was put in a status with no record whatsoever. He had never come into the United States for example or anything else.

Now, this is the gist of a lot of what these files would show. Now, to put in a mass of files that no one could prove or disprove --

THE COURT: That is a question for the jury and as to credibility.

MR. HARRIS: The real question is one of bribery.

THE COURT: But you see if a person didn't have any reason to expect that he would be called because his file shows a legitimate reason to expect not to be called there is no reason to pay anybody to get out of service.

* * *

United States Department of Justice

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to continue the trial for a few days to get them we will.

MR. BRETT SCHNEIDER: Fine, Judge.

THE COURT: I think you are trying to delay me here.

MR. BRETT SCHNEIDER: The reason is they say this insinuates that --

THE COURT: If you have a congressman he doesn't have to pay, does he?

MR. BRETT SCHNEIDER: That may be, but there is nothing wrong with a congressman calling.

THE COURT: No, there is nothing wrong with it at all.

MR. BRETT SCHNEIDER: But those questions would have been improper had they been asked in court and I submit to your Honor one of the questions asked is can the government prove that you took the money when the defendant said no. That could never be admitted on trial. It is like asking "When did you stop beating your wife?"

THE COURT: A suppression motion isn't necessarily involved with a question of admissibility, which depends upon the posture of the trial record when it is offered. As I say, the tapes here aren't very valuable. They may corroborate Lemler in some fashion but that was not the issue in the suppression motion.

* * *

United States Department of Justice

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THE COURT: I doubt that very much. You can bring a motion for it and I will decide it on the papers. You can give notice to the Probation Department in Nassau County.

I think if there is any Brady material in the reports that is known to the federal government they have to give it to you but the state probation report is still supposed to be secret.

MR. BRETT SCHNEIDER: If your Honor please, one of the questions we have there is that Judge Morrison in his sentencing of the defendant described him on the basis of reports as a pathological liar based on the examination done by the County of Nassau.

THE COURT: How are you able to tell somebody is a pathological liar by an examination?

MR. BRETT SCHNEIDER: By an examination of the defendant and listening to him at the trial, they came to that conclusion.

THE COURT: Well, I think that might be an objectionable inquiry anyway and that is a question for the jury to decide.

Stand by a moment and I will give you a trial date. March 3rd, Monday?

MR. HARRIS: I have one problem with that date. I am going to start a trial before Judge Stewart which I

* * *

FILED
FEB 18 1975
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

UNITED STATES OF AMERICA, :

-v- :

WILLIAM SANGEMINO, :

Defendant. :

- -X

74 Cr. 928
S75 Cr. 127

MEMORANDUM AND ORDER

Bricant, J.

All issues raised by defendant's motions undated, but docketed January 6, 1975, were disposed of on the record at a hearing held January 10, 1975, except that defendant seeks to suppress a tape recording of a conversation on March 20, 1974 with one Nathan Lemler, an alleged co-conspirator.

Lemler had admitted his guilt of the same criminal activity here charged. He was cooperating with the Government, although this defendant did not know it. He was not a salaried informant or agent provocateur, but was acting in hope of mitigation of his own problems. At the time of the recorded conversation, this defendant had just appeared before a federal grand jury which had given him the usual warnings and instruction concerning his right to remain silent and his right to counsel. He

was told, explicitly, that he was a target, accused of taking bribes from Lemler to influence his performance of duties in connection with administering the Selective Service Law. He was told he most likely would be indicted.

Movant, seeking to suppress the admissions made to Lemler and contained on the tape, relies on Massiah v. United States, 377 U.S. 201 (1964). That case is readily distinguished. There, the tape was made by a Government informer after indictment and arraignment, and after counsel had been retained. Here, none of these facts are present; movant had not even been indicted. See United States v. Lemonakis, 485 F.2d 941 (D.C. Cir. 1973), cert. denied 415 U.S. 989 (1974). The right to counsel does not attach in the absence of adversary proceedings. Kirby v. Illinois, 406 U.S. 682, 688 (1972).

No basis exists to suppress the tapes. Nor are they so prejudicial that they may not be used to corroborate Lemler's testimony at trial.

The motion to suppress the tape is denied.

So Ordered.

Dated: New York, New York
February 18, 1975

Charles L. Brieant Jr.
CHARLES L. BRIEANT, JR.
U. S. D. J.

INTERVIEW OF NATHAN LEMLER RE: FALCOFF

April 22, 1974
1140 Hours

Falcoff was referred to Lemler by Sy Terry, in the Spring of 1971. Lemler recalls the parents coming to his office. The man was a relatively neat dresser, heavy set. Lemler cannot recall the man's line of business. He recalls haggling over the fee, which he believes was $3,500. This money was paid so that their son was not inducted into the military. Subsequently, both parents returned, and a contract was drawn. Money was paid to Lemler in cash. The contract was read by the parents, who were sitting on Lemler's black leather couch. Each of the parents read a copy of the contract.

Lemler believes that the son was home on some sort of vacation from a school in the south. The boy was then 2-S, and the parents were instructed to contact Lemler the minute he got his classification.

Lemler recalls that he subsequently got a visit from the youth. He is recalled as being thin, of average height, not considered frail, and possessing a sloppy appearance. Lemler discussed with the boy his taking any directed physical at the place of his school; the boy had come in to meet with Lemler so he (the boy) would know Lemler. The youth said he did not want the same type of thing that Lemler had done for the Terry youth - apparently he knew of the Terry boy's case. Lemler reminded him that the contract allowed Lemler to make the decisions.

Lemler believes that subsequently, one of the girls, possibly Lillian Cohen, notified Lemler that they had notified the youth to take his physical at the closest board to the school. Lemler also recalls that he received a subsequent telephone call from the boy's parents, inquiring why their son is marked qualified in view of Lemler's promises and their understanding of the contract. Lemler instructed them to have the son file a notice of appeal of his 1-A status and request a new examination at his local board.

Lemler contacted Major Sangimino for the first time and advised him of the history of the case and that the youth had requested a new examination at his local board. Lemler recalls an automobile accident involving

the boy and his parents wanting to use this incident as cause for medical deferment. Lemler had advised the parents that from their report of the injuries, at best this could mean a stall, but not a deferment.

Lemler recalls a conversation with the parents wherein they asked of a possible refund if the youth was successful on his own. Lemler became angry and mentioned having already made commitments. Lemler also recalls offering to withdraw and working out a refund and closing at that minute. Lemler also recalls contacting Terry and complaining about the actions of the Falcoffs. Terry promised to speak to Mister Falcoff and said Lemler should not give back "a dime."

Lemler is not sure, but he thinks he received a medical report from the doctor who treated the boy because of the auto accident. He believes there were possibly one or two postponements of the second medical, because of the auto accident. He also believes that possibly he (Lemler) brought the auto accident medical report to Major Sangimino for his analysis.

Lemler recalls that subsequently, he sent the boy to the doctor to build up a medical case. He recalls possible instances of fainting or blackout spells.

As regards payments to Major Sangimino at this stage, Lemler was paying twice weekly sums to the major for several cases.

Lemler believes that the boy received a 4-F classification.

CONCLUDED -- 1245 Hrs.

* * *

NATHAN LEMLER, called as a witness by the Grand Jury, being first duly sworn by the Foreman, testified as follows:

EXAMINATION BY MR. HARRIS:

Q State your name, please?

A Nathan Lemler, L-e-m-l-e-r.

Q Mr. Lemler, I would like to advise you that you have the right to remain silent, you understand that?

A Yes.

Q I would also like to advise you that anything you say might be used against you in a court of law.

A Yes, sir.

Q I would like to advise you that you have the right to have an attorney present outside the Grand Jury room, do you understand that?

A Yes.

Q And that if you can't afford an attorney, the court will appoint one for you, you understand that?

A Yes.

Q While this attorney is outside if you care to you can stop questioning at any time and consult that attorney.

A I don't have an attorney.

Q Do you desire to have an attorney?

A I certainly do.

Q Would you like an adjournment?

A May I have an adjournment?

MR. HARRIS: Mr. Foreman, would you excuse the witness and direct him to come back at two o'clock tomorrow afternoon?

THE FOREMAN: You are excused.

THE WITNESS: Thank you.

(Witness excused.)

MAJOR WILLIAM SANGEMINO, called as a witness by the Grand Jury, being first duly sworn by the Foreman, testified as follows:

EXAMINATION BY MR. HARRIS:

Q Would you state your full name?

A Major William Sangemino.

Q Mr. Sangemino, I would like to advise you that you have the Constitutional right to refuse to answer any questions, do you understand that?

A Yes.

Q Anything you do say can be used against you in a court of law, you understand that?

A Yes.

Q You have the right to have an attorney present outside the Grand Jury room and to interrupt questioning at any time to speak to that attorney, you understand that?

A Yes.

Q I would like to advise you further, if you cannot afford an attorney, a court appointed attorney would be able to be outside the Grand Jury room and would have the same rights I have just described.

A Yes.

Q If you can't afford an attorney the court would appoint one for you, you understand that?

EXHIBIT No. 1 XII
SEP 26 1974
U.S. GRAND JURY
S.D.N.Y.

A Yes.

Q I would further like to advise you that this Grand Jury is investigating violations of the Federal law, specifically this afternoon they are investigating violations of Title 18 of the United States Code Section 201 which is bribery involving public officials.

I would further like to advise you that you are a target of this investigation and there is a substantial likelihood that you will be indicted by it.

A I understand what you are saying.

Q Do you have an attorney present?

A No, I don't.

Q Would you desire to have an attorney present

A I don't know. Should I? I'm an Army office I could get the Judge Advocate General.

Q Do you desire an opportunity to seek counse

A I don't think I need one.

Q You are prepared to answer questions now and waive your rights to counsel?

A Yes.

Q You are a target of this investigation and that means you may be indicted and may be a defendant and may stand trial as a result of this investigation.

A I didn't do anything. I thought I was suppose

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to come up and be a witness. I didn't do anything that I have to get an attorney for.

Q You are prepared to go ahead at this time?

A Yes.

Q Major Sangemino, as a matter of fact, what position do you hold with the Army?

A I'm an active duty field grade officer with the rank of Major.

Q What is your assignment?

A I'm with the Selective Service headquarters in New York City.

Q Doing what?

A I'm Chief of local board operations.

Q And how long have you been so assigned?

A Well, this Chief local board operations about two years and in addition I'm Public Information Officer and just before that I was manager of the Administrative Divis[illegible] and handled the personnel and hiring of civil service employees and I had that for about two or three years and before that I was Training Officer.

Q Did you ever in your job receive any remuneration for helping Selective Service applicants, any money or other things of value?

A No, I got $50. for a speech once.

Q You did not receive any money at any time for helping a Selective Service applicant?

A No, I did not receive any money at any time for that.

Q Did you ever assist anyone who was already on active duty in getting a discharge?

A Several times.

Q Did you ever take any money for that?

A No, I did not.

Q Did you ever have any dealings with Dr. Nathan Lemler?

A Yes.

Q Did you ever take any money from him?

A No.

Q For any reason?

A No, not for any reason.

Q I would also like to advise you that if you wilfully give a false answer to any of my questions that constitutes perjury and you can be prosecuted for that.

A Yes, but he never offered me any money to do anything illegal.

Q Did you ever take any money, period?

A No, I never took any money, period.

Q From Dr. Nathan Lemler?

A No, I did not. I mean I see what you are getting at, but he didn't have to give me any money. That is my job to do what I did for him.

Q What did you do for him?

A Can I talk or just answer questions?

Q Just answer the questions.

Did you in fact assist Dr. Nathan Lemler with some of his clients in their Selective Service problems?

A Yes, I did.

Q Did you ever take any money for that?

A No, I did not.

MR. HARRIS: Would you excuse the witness?

THE FOREMAN: You are excused.

(Witness excused.)

LETTER DATED MARCH 26, 1975

JH:sk

March 26, 1975

Honorable Charles L. Brieant, Jr.
United States District Judge
United States Courthouse
Foley Square
New York, New York 10007

Re: United States v. Sansemino
74 Cr. 928 & 75 Cr. 127

Your Honor:

Enclosed please find the 3500 and Brady material for the witness Nathan Lemler in the above referenced case. I have pre-marked these exhibits 3501 through and including 3576. The Government has included among these exhibits many documents that the Government does not concede are legally required to be turned over to the defendant under any legal authority. However, out of an excess of caution the Government has concluded that in this case Section 3500 and Brady v. Maryland should be given a wide berth.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: _____
JEFFREY HARRIS
Assistant United States Attorney

cc:
Joel H. Brettschneider, Esq.
26 Court Street
Brooklyn, New York 11242
(without enclosures)

United States Department of Justice

ADDRESS REPLY TO "UNITED STATES ATTORNEY" AND REFER TO INITIALS AND NUMBER

JH:mcc

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

April 1, 1975

Joel H. Brettschneider, Esq.
26 Court Street
Brooklyn, New York 11242

Re: United States v. Sangemino
74 Cr. 928 and 75 Cr.127

Dear Mr. Brettschneider:

This letter will confirm a conversation I had with your secretary advising her that the start of the above captioned case has been postponed from April 7, 1975 at 10:00 A.M. to April 8, 1975 at 10:00 A.M.

The "3500" material will be available for you in my office at 11:00 A.M. on Monday April 7th. I intend to make available ~~to~~ you at that time the "3500" material for all the Government witnesses that I presently intend to call. However, please be advised that there are several potential witnesses I have not decided whether or not to call. In any event, the "3500" material as to these witnesses is brief.

Pursuant to the direction of the Court I have personally reviewed the FBI documents relating to Nathan Lemler and after said review make the following fact known to you. In 1972 the Rome police checked the records of the University of Rome and found no record of Nathan Lemler having ever attended said university.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: Jeffrey Harris
JEFFREY HARRIS
Assistant United States Attorney

cc: Hon. Charles L. Brieant, Jr.
U. S. Courthouse - Room 607-L

I have before me a pathological liar who stands convicted of 20 counts of grand larceny on its face totalling $244,000.

The trial of this case lasted a total of 7-1/2 weeks during which witness after witness pieced together a picture of one of the most brazen and bizarre schemes to defraud ever xx unfolded in the courts of this County. Many of the complainants have been bilked by this defendant out of most if not all of their life savings. Many of the young men who were laboring under the false belief that this defendant had the capacity to place them in various medical schools in this country suffered serious interruptions in their educations and lost many months of valuable time during critical periods of their educational careers, and perhaps they lost something even more precious which I will refer to in a moment.

As was disclosed during the trial and has been further verified by the probation report, the defalcations by this defendant extended far beyond those covered by this indictment. What is perhaps even more frightening about this case is that the cancer of this defendant's immorality and corruption metastasized and apparently spread to his victims. Capitalizing on the urgent desires of these young men to embark upon medical careers and the impelling wish of their families to aid them in that goal, the defendant was able to convince these people that the officials of medical schools throughout the country were on the take, and that he was in a position to guarantee the admission of these young men through the medium of under the table payments to the officials of these schools. It is a sad commentary that these young people and their families were gullible enough to believe this man. The defendant's utter lack of success in placing those involved in the indictment and many others who did not meet the

requirements of the various medical schools is a tribute to the integrity of the schools and the honesty of their administration. This is not contradicted by the evidence adduced that the defendant was involved in having the parents of some youngsters who were already in the pool of acceptable students make sizable pledges to the Chicago Medical School in 1968 or 1969. As was stated by the District Attorney during the trial, the defendant used these as nothing more than shills or bait in the development of this gigantic hoax. It is, however, cause for serious concern that the testimony during the trial revealed that many of these young men were present at the time or were fully aware of the fact that their parents or in-laws were parting with sums between $5,000 and $25,000 in the belief that the monies were to be used to bribe their way into medical school. It is of even greater concern that many of these same young men are now students at medical schools in foreign countries, fully expecting to return to this country to practice medicine. One wonders how deeply this defendant has infected or polluted the morality or ethics of these future doctors.

In 1963, ~~him~~ in Queens County, the defendant was permitted to plead out to an attempted grand larceny in the 2nd degree in satisfaction of the indictment charging him with 4 counts of forgery second degree, 2 counts grand larceny 1st degree, and 2 counts of attempted grand larceny 1st degree. For this, he served an indeterminate term at Rikers Island. While the defendant has served his time for that offense, the circumstances of that offense amply demonstrate that the manipulative nature of this defendant is not newly acquired. The defendant's employment history, his military history, and his marital history have all been patently demonstrative of a hedonistic/ NATURE AN UTTER disregard of any moral values whatsoever. By way of example, while the defendant professed a compatible marital relationship with his second wife

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Frances, until her murder on May 16, 1972, the fact is that he had contracted a bigamous marriage with a Mrs. Marilyn Blicksilver in Stamford, Connecticut, on November 4, 1970. At that time, Mrs. Blicksilver was married and had a husband living from whom she was not divorced. The defendant was fully aware of this fact. As you will see, the defendant's relationship with Mrs. Blicksilver becomes even more significant and relevant to these proceedings.

I have had occasion to read the affidavits of James M. Spector, the Receiver of Remedial Education, Inc., and Alexander A. Rockmore, the attorney for the Receiver, dated June 8, 1973, and October 1, 1973 respectively, which were made in opposition to a motion by this defendant seeking summary judgment in an action brought by the Receiver to compel him to account for monies improperly appropriated by this defendant from the Corporation. These documents indicate that payments had been made to the Corporation and to the defendant personally totalling $464,200, and that the sole assets coming into the hands of the Receiver as of June, 1973, were $418, the proceeds of the sale of the office furniture. It is apparent from these affidavits that this defendant transferred substantial sums belonging to the Corporation to himself, even after the date of the appointment of the Receiver and in spite of the injunction issued by the New York Supreme Court. These affidavits demonstrate that in March, 1971, the defendant opened a joint account at the Bankers Trust Company in Woodmere with his paramour, Marilyn Blicksilver, and on the same date opened a safe deposit box at that bank. Between March 24, 1971 and September 23, 1971, the defendant received $139,750 in cash, of which approximately $77,000 was deposited in this account with Marilyn Blicksilver. On February 18, 1972, the defendant and Marilyn Blicksilver were in Freeport in the Bahamas where they apparently opened another joint account in the Barclay Bank, and

the Bankers Trust Company account as well as the safe deposit box were closed out a month later in March of 1972. To date, these monies have not been accounted for.

The capacity of this defendant to manipulate appears to have no limits. The liklihood of his making any voluntary restitution to those he has victimized is virtually nil. Two years have elapsed and the Receiver has been unable to trace the funds. There is serious question as to whether these monies will ever, in fact, surface. However, if they should, it would be unconscionable for this defendant or his transferees to have the benefit of them. I am, therefore, of the opinion that in addition to the sentence of imprisonment to be imposed upon the defendant, a fine is both appropriate, and under all of the circumstances of this case, essential. Under the provisions of the Penal Law, I am authorized to impose a fine equal to twice the amount of the defendant's gain. I am aware that the indictment charges the defendant with specific amounts of grand larceny in each count, the amount being the total that he appropriated from each of the complainants. I am also aware that the evidence on the trial indicated that the defendant in some cases made token payments on behalf of the various complainants such as forwarding application fees to the various medical schools. In no case were the amounts significant. Thus, a fine in the amount of each count of which the defendant has been convicted is substantially less than the limits authorized under the Penal Law. I am also of the opinion that this defendant's propensity for manipulation, and his unscrupulous methods of manipulating people and engaging in unlawful conduct as demonstrated during the course of the trial and in the probation report that I have received, fully warrants the conclusion that it would be in the best interest of society that he be removed from circulation, and that minimum sentences as well as maximum sentences be imposed on each count of the indictment.

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It is therefore the judgment of this Court that on the first count of this indictment that the defendant be sentenced to an indeterminate sentence of imprisonment which shall have a maximum term of 7 years, and the Court hereby imposes a minumum term of imprisonment of 2 years and 4 months, and that a fine be imposed upon the defendant in the sum of $5,000,

Continue as to each count, except 3rd and 14th.

and it is further

ADJUDGED that the sentences of imprisonment imposed on the odd numbered counts/shall run concurrently with each other but/consecutive to the sentences imposed upon the even numbered counts, and it is further

ADJUDGED that the sentences of imprisonment imposed on the even numbered counts shall run concurrently with each other but/consecutive to the odd numbered counts, and it is

DIRECTED that the defendant be committed to the custody of the New York State Department of Correctional Services and be delivered to Green Haven Correctional facility at Stormville, New York, and to be dealt with in accordance with the laws pertaining to the sentence, and the District Attorney is directed to proceed with the collection of the fines herein imposed totalling $244,000.

NOTE: Sentence corporation.

* * *

A Yes, we did.

Q To what did you change it and for what reason?

A It was changed to Remedial Education, Inc. I would be hard pressed for a reason why other than it was suggested by our attorney and accountant.

Q Let me ask you this: Was the Academic Improvement Center a corporation?

A No, that was a partnership.

Q Was Remedial Education a corporation?

A That was a corporation.

Q Did Remedial Education, Inc., function in the same way that the Academic Improvement Center did?

A At the outset.

Q Did there come a time when the primary emphasis in your business shifted from the tutorial school to your placement service?

A Well, the placement became a major portion of the business very soon after we were incorporated.

Q Within the area of placements, did you have any particular specialty?

A Yes. Medical and dental schools. The demand for placement was in medical and dental schools.

Q During the course of running your business, did you have occasion to learn and develop any expertise with

regard to medical school admissions in the United States?

A Well, I just don't want to appear egotistical, but I was supposed to be one of the nationally known experts on medical school enrollment in the United States.

Q Can you tell us what, if any, indicia of that expertise was ever shown?

A Well, I was invited to appear before a Congressional subcommittee in April 1971, which I attended, and I appeared as a witness for the Government investigating peculiar enrollment techniques in some of our medical schools.

Q Did you ever testify before the New York State Legislature?

A Yes, I did, a committee headed by then Assemblyman Martin Ginsburg, Chairman of the State Legislative Committee on Health, Education and Welfare, invited me as a guest speaker at a public hearing he was holding.

Q Would you please tell us, when a student came into your office and was requesting your services for placement, what was the initial thing that you would do?

A Well, the first thing I would do is find out who referred him to us, because we did no advertising. This was solely a word-of-mouth referring service.

Q What did you do after that?

A Well, if it was an academic problem, the next thing I would do is look over the candidate's academic background, transcripts, et cetera, et cetera.

Q Did there come a time after looking over the background of your candidate when you set fees?

A Beg your pardon?

Q When you set fees.

A Yes.

Q Can you please tell us what the range of fees you charged your clients was?

A Well, if the problem was an undergraduate problem, it would range anywhere from $300 to $1,000 or possibly $1500.

If it was a graduate school problem, it would range anywhere from $1500 or $2,000 to $30,000.

Q When you accepted a person as a client, did you have any sort of writing or any other documentation which memorialized that relationship?

A Never in my memory in that business have I had a client with whom I dealt with that I did not give a written contract, spelling out specifically what I was responsible for.

Q Did that contract also speak to what was to

happen if you were unsuccessful?

A There was never a contract that I issued that didn't call for a full refund --

MR. BRETTSCHNEIDER: I am going to object unless they produce the contract.

THE COURT: I will overrule that objection but I would suggest to the witness that that question can be answered yes or no.

Do you want the question read again?

THE WITNESS: Yes, please.

THE COURT: Please read back the question.

(Question read.)

A Yes.

Q What was to happen if you were unsuccessful?

A I guaranteed to make a full refund of any moneys paid to me with no deductions made for any disbursements or expenses I may have encountered while handling the contract.

Q During the course of your placement service for graduate and undergraduate students, did there ever come a time when any of your candidates were having problems with the selective service system?

A Yes.

Q Specifically calling your attention to 1968,

* * *

* * *

receptacle that he had, and I placed it on the top of this receptacle.

Q What occurred then, if anything?

A The Major walked me out to the elevator with his arms around my shoulder and as we walked through the office and then down the long corridor, he said to me that if I had any Selective Service problem or any military problem at all to feel free to call upon him and he was sure he could handle the problem.

Q From that time until your business was closed in early 1972, did you ever have occasion to go to the Major with any other Selective Service problems?

A Many, many, many times.

Q Are you able to place the number of times that you went to him with Selective Service or military related problems?

A Exactly 401 times.

Q Can you tell us how, after this passage of time, with that great number of cases you can be so exact?

A Because I kept a bookkeeping system, a file system, of 3 by 5 white cards: One set for the medical or dental school or graduate school placements, one set specifically for military cases, and just the night before my office was closed, when I knew that the Attorney

General's representative was coming in with a court order, I counted these cards in both files before turning them over to my daughter, who then worked for me, for safekeeping in her home.

THE COURT: You say the Attorney General, you mean the New York State --

THE WITNESS: Of New York State.

THE COURT: The New York State Attorney General?

THE WITNESS: Yes, sir.

Q After this initial $300 which you just testified about, did you ever give any further money to Major Sangemino?

A A young fortune.

Q Can you estimate from that time, from the time of the first payment, until the time your business closed approximately how much money you gave him?

A I would say it was in excess of $50,000.

Q Let me specifically ask you, from the period of October 1, 1969, until the close of your business, can you make an estimate how much money you gave him during that period of time?

A I would say it was $30,000 or thereabouts.

Q You mentioned that you gave your clients contracts.

* * *

* * *

When your client wanted Selective Service work done for him, did he likewise get a contract with regard to the Selective Service?

A No one ever left my office who retained me for any service who didn't have a written contract.

Q I now show you what has been premarked as Government's Exhibits 1 and 2 for identification. First let me show you 1.

Can you identify that?

A Yes, sir.

Q What is it?

A That is the contract that I gave to Mrs. Resnick.

THE COURT: Mrs. who?

THE WITNESS: Resnick.

THE COURT: Resnick.

Q Let me show you Government's Exhibit 2 for identification and ask if you can identify that.

A Yes, sir.

Q What is it?

A That is a contract that I gave to the grandfather of Scott Pollowitz, Mr. Pollowitz.

Q As to Government Exhibit 1, is there any mention of Selective Service in that contract?

MR. BRETTSCHNEIDER: If the Court please, may I be permitted to examine the documents before they start testifying to something that is not in evidence?

THE COURT: Haven't you seen them? All right, show them to counsel.

MR. BRETTSCHNEIDER: No, I have not seen any of the documents.

THE COURT: Show them to counsel. Are you planning to offer them?

MR. HARRIS: Yes, I was just laying a foundation, your Honor, showing their relevance.

MR. BRETTSCHNEIDER: May I have a moment to read them, Judge?

THE COURT: Yes, sure.

MR. BRETTSCHNEIDER: If the Court please, I am in receipt of this document which is signed by Remedial Education --

THE COURT: Don't make speeches in front of the jury. If you have an application, ask to come to the side bar.

MR. BRETTSCHNEIDER: May I approach the bench?

THE COURT: All right.

(At the side bar.)

THE COURT: I want to say to you that my

clerk's minutes indicate that Exhibits 1 through 96 have been given to you already.

MR. HARRIS: 3501 through 3596.

MR. BRETTSCHNEIDER: No, sir.

THE COURT: It says 1 through 96.

MR. HARRIS: 3501 --

THE COURT: I will have it corrected. Very well.

MR. BRETTSCHNEIDER: If the Court please, the document is not signed by anybody except Remedial Services.

THE COURT: Isn't that the name Lemler on there?

MR. BRETTSCHNEIDER: But that is not the signature of the person on the contract.

THE COURT: That is a matter for weight, isn't it? That goes to the weight of the document.

(In open court.)

THE COURT: Is there an open question?

MR. HARRIS: Yes, there is. I will put it to the witness again, your Honor.

Q As to Government's Exhibit 1 for identification, does that contract make any mention of Selective Service?

A Yes, sir, it does.

Q As to Government's Exhibit 2 for identification, does that contract make any mention of Selective Service?

THE COURT: You see, if it comes into evidence, it will speak for itself, Mr. Harris.

MR. HARRIS: I know, your Honor.

A May I read it, sir?

Q Please.

A Yes, sir.

MR. HARRIS: Your Honor, at this time I will offer 1 and 2 for identification into evidence.

MR. BRETTSCHNEIDER: I would object at this time because there is no connection with the defendant.

THE COURT: It is more than that. You have not established whether they were signed by anybody or delivered to anybody who signed them. There's no proper foundation, Mr. Harris.

MR. HARRIS: Let me ask a few more questions, then.

Q As to Government's Exhibits 1 and 2, do they bear your signature?

A Yes, sir. 1 does, yes, sir.

Q Whose copies are those that you have, those specific doucments?

A Those are my copies, sir.

Q Were there other copies?

A Yes, sir. Our modus operandi was to make --

MR. BRETTSCHNEIDER: I object to the modus operandi, if the Court please.

THE COURT: No, I will find out what he did with the other copies. Objection overruled.

Never mind the modus operandi. Are there any other copies of that?

THE WITNESS: Yes, sir.

THE COURT: Who has the copies?

THE WITNESS: The client.

THE COURT: But you don't have a copy signed by your client?

THE WITNESS: Yes.

THE COURT: You do have?

THE WITNESS: I was given a copy signed by the client, which was put into the files, which were taken by the Attorney General of the State of New York.

Q Do you presently have those records?

A No, I don't.

Q Are Government's Exhibits 1 and 2 for identification exact copies lacking the signature of the client of the contracts which were signed by you and the client?

A Absolutely.

MR. BRETTSCHNEIDER: I object to that as not

best evidence.

THE COURT: There may have to be a showing as to what happened. The Court understands that these are documents which this witness testifies that he gave to these particular clients of his business.

Is that right?

THE WITNESS: Yes, your Honor.

THE COURT: And that also it is not claimed they were given to Major Sangemino.

MR. HARRIS: No, it is not.

THE COURT: All right. So long as the record is clear in that regard, I will accept the exhibits in evidence.

You may have an objection, a continuing motion to strike.

(Government's Exhibits 1 and 2 for identification received in evidence.)

MR. BRETTSCHNEIDER: Could we approach the bench on this?

THE COURT: I'm protecting your record on it. You have a motion to strike it out and I will consider it further with you at the next conference. They are not to be shown to the jury until I have had an opportunity to talk with you.

Go ahead, Mr. Harris.

Q You testified that you had 401 cases in which you consulted Major Sangemino.

Were all of these Selective Service cases?

A No, sir.

Q Were some of them people who were already on active duty?

MR. BRETTSCHNEIDER: I object to the counsel leading the witness?

THE COURT: It is leading.

Q Describe what the other cases were.

A Well, we handled those seeking deferment from Selective Service, we handled those already in the Army, looking either for compassionate discharges or assignment changes, and we handled those in reserve units or National Guard units, almost anything connected with the military.

Q Of all your cases, how many resulted in a successful outcome to the client?

A Four hundred.

Q How many resulted in a loss, so to speak?

A One, Lieutenant Petro.

Q Of the 401 cases, can you give us an estimate of how many of those clients were residents of the five boroughs of the City of New York?

MR. BRETTSCHNEIDER: I object to the term "residents."

THE COURT: I don't know why we have to take an estimate if he has the cards.

Mr. harris: There's no testimony he has the cards, your Honor.

THE COURT: All right.

MR. HARRIS: Let me just make that clear.

Q When was the last time you saw those index cards?

A The night before my office was closed.

Q Have you ever seen them since?

A No, sir, I have not.

Q Do you know their present whereabouts?

A No, I don't.

THE COURT: I don't know that he has a basis for estimating the number. He may be asked whether there were any of them who were not. If he recalls any, he may tell us.

MR. HARRIS: Your Honor, I think that if he can give an estimate, he should be allowed to.

MR. BRETTSCHNEIDER: I object to any conversation with respect to --

THE COURT: Yes, the question is whether he has

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* * *

A He said, "Well, we can no doubt get him a compassionate reassignment

Q In response to his statement, did you say anything to him?

A "How?"

Q What did he say to you?

A There was a conversation that had to do -- first I was asked if the Major was married.

MR. BRETTSCHNEIDER: I'm going to object unless -- what is said, not --

THE COURT: The witness may give us the substance of what was said as best he recalled it.

You are not required to give the exact words, but you can give us the substance of the conversation on the telephone after you asked "How."

What, if anything, did he say to you after you asked "How"?

THE WITNESS: "Well, we could probably have a nervous breakdown by his wife if he is married."

THE COURT: He said that to you?

THE WITNESS: Yes.

Q What did you say to him?

A "I don't think that is a very good idea because his wife is a professional woman, she is a registered

nurse and this may not sit well with her."

Q What did he say?

A He asked if there was another member of the family.

I said, "Yes, this man has an old mother who lived in Far Rockaway."

Q What did he say when you told him about that?

A That I should arrange with one of our doctors to have the mother act as a potential suicide.

Q Was there any further conversation at that time between you and Major Sangemino?

A I said -- I told Major Sangemino that I would turn it over to Dr. Teitelbaum.

Q Was that the end of the conversation?

A And that I would get back to him later.

Q Upon completing this conversation, what, if anything, did you do?

A I called Dr. Myron Teitelbaum.

Q What did you tell Dr. Teitelbaum?

THE COURT: Do we need to take that?

MR. HARRIS: Your Honor --

THE COURT: He had a conversation with Dr. Teitelbaum.

What happened then? Did you have a conversation

with Dr. Teitelbaum?

THE WITNESS: Yes, I did, sir.

THE COURT: What happened after that?

THE WITNESS: I informed -- as a result of that conversation, I informed Major Weiss that he was to have his mother sit on the edge of her bathtub and put one end of a rope around her neck and the other end of the rope over a shower rod, and that the Major was to call her on the telephone, get no answer, and come to the house and find his mother in this condition and call his physician, Dr. Myron Teitelbaum.

Q Do you know if this occurred?

MR. BRETTSCHNEIDER: Objection unless he was present.

THE COURT: He can answer it yes or no, whether he knows.

A Yes.

THE COURT: How do you know, were you there?

THE WITNESS: No.

Q What happened after Dr. Weiss' mother was so discovered?

MR. BRETTSCHNEIDER: I object to "so discovered."

THE COURT: Yes, the witness doesn't know if she was so discovered. But he may testify as to what he

knows.

MR. HARRIS: Your Honor, this is a conspiracy count.

THE COURT: I know that is the charge here but let's find out what this witness did.

After that, what happened?

THE WITNESS: Through Dr. Teitelbaum, I advised the Major that he was to take his mother --

MR. BRETTSCHNEIDER: If the Court pleases --

THE COURT: This is now Major Weiss we are talking about. Let's keep the two majors separate.

THE WITNESS: Yes.

THE COURT: Take his mother where?

THE WITNESS: To the South Oaks Mental Sanitarium in Amityville, New York, and I would meet him there.

Q Did you in fact meet him there?

A Yes, I did.

Q What happened then?

A I registered his mother as a potential suicide at the hospital.

THE COURT: Did you tell somebody out at the hospital what she allegedly had done?

THE WITNESS: Yes, I did, sir.

THE COURT: About the rope and the shower rod?

THE WITNESS: Yes, sir.

Q Then what did you do?

A I came back to my office, I called Sangemino that Mrs. Weiss, the Major's mother, was in the hospital and he said that he would contact the Major's commanding officer in Washington, and to the best of my recollection, that is the last I had to do with it, except to receive a telephone call from Major Weiss that he was permanently assigned state-side.

Q In connection with the Weiss case, did you pay any money to the defendant?

A Yes, I did.

Q Where did you pay him and how much and when?

A I paid him in the toilet, the men's toilet, 26 Federal Plaza, and I believe I paid $1,000 or $1200. I can't be sure.

Q Let me call your attention to the late 1968 or early 1969 and ask if you at that time acquired a client named David Zweibel.

A Yes, I did.

Q How did it come about that Zweibel became a client of yours?

A I'm sorry, sir, I'm hearing every second or

* * *

third word.

Q How did it come about that David Zweibel became a client of yours?

A His father-in-law was associated in business with my son-in-law.

Q Did there come a time when you had a conversation in your office with Zweibel's father-in-law?

A Yes, sir.

Q Would you tell us what the father-in-law's name is, who was present, as best you recall, when it was, and what was said?

A I will try to answer that in the order that you gave it to me.

The father-in-law's name was David Blank. The conversation took place in my office. My secretary was not there throughout the conversation but in and out.

I'm sorry, sir, I forgot the rest of your question.

Q Can you place a time on this conversation?

A It seems to me it was in the evening.

Q A date?

A Early -- very early spring.

Q What year?

A 1969 or 1970.

Q At that time what, if anything, did Mr. Blank tell you?

A He said that I had to get David out of the Army because David's wife, Mr. Blank's daughter, was -- it was just impossible to live with her. She was living with her parents at the time, or so I was told, and he just couldn't live with her.

Q Did you establish a fee in this case?

A Yes, I did.

Q What was your fee?

A $3500.

Q Was that fee paid to you?

A Yes, it was.

Q In what form?

A Cash.

Q After receiving your fee, what, if anything, did you do with regard to this case?

A Again I called Major Sangemino.

Q This was telephonic communication, is that right?

A Yes.

Q At that time what did you say to him and what did he say to you?

A I just don't remember the verbatim conversation

except to say how important this was to me because of the relationship between the soldier's father-in-law and my son-in-law.

Q As a result of your conversation with Major Sangemino, what, if anything, did you do?

A I recall Major Sangemino telling me that this was a good opening for a compassionate consideration for a mentally ill wife, and that we should handle it through a physician.

Q Did you handle it through a physician?

A Yes, I recommended to the client that she visit Dr. Myron Teitelbaum.

Q What did you do next?

A I went to the Red Cross and arranged for a compassionate emergency relief.

MR. BRETTSCHNEIDER: If the Court please, I object to the term "arranged."

THE COURT: Yes, he may say what he did but don't give us a conclusory expression like "arranged."

Did you go see somebody in the Red Cross?

THE WITNESS: Yes.

THE COURT: Where did you go?

THE WITNESS: Hempstead, Long Island.

THE COURT: Did you ask for something there?

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THE COURT: Mr. Harris, you have an application?

MR. HARRIS: You said at the recess, we would take up Exhibits 1 and 2.

THE COURT: I said at a recess.

What is it you want to take up about them?

MR. HARRIS: I would like to read a portion of them to the jury.

THE COURT: Have you accounted for the other copies?

MR. HARRIS: No, your Honor. The testimony of this witness is that they were taken -

THE COURT: By the Attorney General of the State of New York. He is amenable to subpoena, isn't he?

MR. HARRIS: He has been subpoenaed and those records are not available.

THE COURT: Do we have that somewhere here in the record?

MR. HARRIS: We do not have it in the record of this case but he also was subpoenaed in Nassau County and he has turned over to me everything that he could find and that does not include any of the other copies of this contract.

MR. BRETTSCHNEIDER: May I indicate that I am in possession of a statement by Mr. Lemler, question and

answer and if I may, I would like to read it into the record.

THE COURT: Shall we excuse Mr. Lemler before we do that? I don't want you to say anything that would be suggestive to any future answer.

MR. BRETTSCHNEID[illegible] All right, Judge, you may excuse him.

THE COURT: Step through that door and stay in there, if you will, please.

(Witness temporarily excused.)

THE COURT: I want to get back to work with this jury as soon as I can.

What is the statement you want to read into the record?

MR. BRETTSCHNEIDER: There was a statement taken of Dr. Lemler duly sworn to on December 23, 1971, at which time the question was asked:

"Well, let me read a paragraph to you that I have here without marking for anything like that. Let's see if it refreshes your recollection:

"'It is further agreed that if the candidate accepted then, within one week following such acceptance this agreement and all copies thereof, shall, in the presence of blank or a person of his choice and Nathan

Lemler, or Remedial Education, Inc., or a person of his choice be destroyed and there shall remain no written evidence of this agreement.'"

THE COURT: Where is that you are reading out of?

MR. BRETTSCHNEIDER: That is a copy of a questioning of Nathan Lemler.

THE COURT: What document is being read in the course of that questioning?

MR. BRETTSCHNEIDER: The minutes of a questioning of Dr. Lemler before the District Attorney's Office of Nassau County after being duly sworn --

THE COURT: Paragraph 11 of these exhibits.

MR. BRETTSCHNEIDER: Pardon?

THE COURT: Paragraph 11 of these agreements.

MR. BRETTSCHNEIDER: I don't know. I haven't read the entire agreement, Judge.

THE COURT: You ought to do that. I think there is an adequate showing if you don't dispute the contention of the U. S. Attorney that he subpoenaed the Attorney General of the State of New York and they responded turning over all they had and did not have all the agreements, the other copies.

If you dispute that, I will have the Attorney

General's man here on the stand.

MR. BRETTSCHNEIDER: I would question some of it because the statement indicates to me, or at least some of the letters written by Mr. Lemler or Dr. Lemler later on to Mr. Harris, that these documents were taken out to Nassau County, baskets of it, your Honor.

MR. HARRIS: Whatever records the Attorney General had were in fact at some point taken to Nassau County but I can tell you that I personally went through them and these agreements do not exist.

I have also personally been to the Attorney General's Office and searched through his warehouse myself and an investigator looking for further records and could not find any.

THE COURT: You may have to satisfy the best evidence rule by bringing the investigator and letting him tell us that he went to the Attorney General's warehouse and searched.

MR. BRETTSCHNEIDER: These are photostatic copies. They must have been taken of something.

THE COURT: Unfortunately, you see, these are copies signed by Lemler and not signed by the Pollowitzes or the Resnicks.

MR. BRETTSCHNEIDER: That's correct. It is also

a photostatic copy.

THE COURT: What is it a photostatic copy of, Mr. Harris? Where is the copy you photostated?

MR. HARRIS: That is the form in which I received the exhibits.

THE COURT: From whom?

MR. HARRIS: Those exhibits, one was received -- the Pollowitz one was received at the beginning of the investigation, as I recall, from the receiver of Remedial Education and I believe the Resnick one was among the Attorney General's papers in that form, but no other copy.

THE COURT: All right. It may be necessary to show where the originals went. I will reserve on that for the time being. I want to finish working with the jury for the day, if I can.

MR. HARRIS: I would like to arrange to have them here if Mr. Brettschneider is going to require that.

MR. BRETTSCHNEIDER: I was given a list of certain names and certain documents.

THE COURT: Confer privately with each other at the end of the day. We want to be able to reach an accommodation but if you can't, we will have the investigator on the stand.

* * *

shipped overseas upon his graduation from Officers' Candidate School and that he heard I had a lot of influence and he would like to do something that would insure that the boy would either get out of the Army or not go overseas.

Q Did you agree to take the case?

A I did.

Q Did you set a fee?

A I did.

Q What fee did you set?

A $9,000.

Q Was that fee paid to you?

A Yes.

Q By whom?

A Mr. Petro.

Q In what form?

A Cash.

Q After you received your fee, what, if anything, did you do?

A I discussed the matter with Major Sangemino.

THE COURT: When and where did you do this?

THE WITNESS: At the Major's office.

MR. BRETTSCHNEIDER: May we have a date?

THE COURT: Yes, fix the date of any discussion, Mr. Harris.

Q Have you finished your answer, sir?

A No, I am trying to think, sir.

As a consequence of my discussion with Major Sangemino, I suggested to Mr. Petro that his wife be admitted to South Oaks Sanitarium.

Q After you made this suggestion, what, if anything, did you do about it?

A I had Mrs. Petro visit Dr. Teitelbaum at his office to set up a history of emotional disorders and then I brought Mrs. Petro out to the hospital and enrolled her as a patient of Dr. Teitelbaum's.

Q What hospital?

A South Oaks.

Q Calling your attention to about the time that Mrs. Petro became a patient, did you have occasion to pay the Major for his work in this case?

A Yes, I did.

Q Do you recall how much you paid him?

A $1,000 or thereabouts.

Q Let me ask you this:

Did this plan work as regards young Lieutenant Petro? Did he receive a discharge at that time?

A He did not.

Q Do you know how long Mrs. Petro stayed in South

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Q Was he in military service at the time?

A Selective Service, I meant to say.

Q Let me ask you this: What efforts did you make first as to the medical school aspect of the Resnick case?

A We filed applications -- you are speaking now about the medical school?

Q Yes.

A We made many, many applications and I held many, many conferences with admissions --

MR. BRETTSCHNEIDER: I object to this and I would like to see those documents again.

THE COURT: If he made applications to medical schools for J. Resnick, he may so testify and you may ask him on cross-examination when your turn comes what schools he applied to.

Did you make at least one application to a medical school?

THE WITNESS: More than that, your Honor.

THE COURT: All right. Let's go on to something else.

Q Did there come a time when Mr. Resnick left to go to medical school?

A Ostensibly, yes.

MR. BRETTSCHNEIDER: How would he know?

THE COURT: He could know whether he got accepted.

Did he get accepted in some medical school?

THE WITNESS: This was out of the country, sir.

THE COURT: All right.

Q Where, if you know, did Resnick go?

A Barcelona, Spain.

MR. BRETTSCHNEIDER: Again I object to this. It is based on his knowledge.

THE COURT: I don't know if it is.

Q How did you know that?

A I placed him there.

THE COURT: It is his knowledge.

Q Did you learn how long Edward Resnick remained in Barcelona?

A Just about a week.

THE COURT: Is J. Resnick and Edward the same?

MR. HARRIS: Edward, middle initial J., Resnick.

THE COURT: All right.

Q Did there come a time subsequent to Mr. Resnick going to Barcelona when he received a notice for a pre-induction physical for the Armed Forces of the United States?

A I was told that by his mother.

Q Did you have a conversation with his mother regarding this pre-induction physical?

A Yes, I did.

Q What was that conversation?

MR. BRETTSCHNEIDER: I ask that he give the time, date and location.

THE COURT: Yes, the time and place and who was present, to the best of your ability.

THE WITNESS: The place was in my office with Mrs. Resnick sitting across my desk. I know of no one being present and I could not possibly recall the date.

Q I show you Government Exhibit 3-A for identification and ask you -- excuse me, 3-B, and ask you if it refreshes your recollection at all.

A It would have to be --

MR. BRETTSCHNEIDER: Objection to "it would have to be."

THE COURT: The question is whether it refreshes your recollection.

THE WITNESS: Yes, it does.

MR. BRETTSCHNEIDER: Can I see what he is referring to?

THE COURT: Don't you have a copy of 3-B?

MR. BRETTSCHNEIDER: No, I don't.

THE COURT: Give him a copy of 3-B.

Q What is the date, as best you can recall?

A Sometime after February 5th.

THE COURT: Of what year?

THE WITNESS: 1971.

Q Do you know if Edward Resnick appeared for his pre-induction physical?

A He did not.

Q What, if anything, to your knowledge, was the next thing that happened in the Edward Resnick case with regard to Selective Service?

MR. BRETTSCHNEIDER: I object to that.

THE COURT: If he knows. I will take it subject to connection anyway. You have a continuing motion to strike.

Did you find out if anything happened?

THE WITNESS: Yes, sir.

THE COURT: What did you find out what happened?

THE WITNESS: I remember getting a call from the FBI --

MR. BRETTSCHNEIDER: I object to any conversation with the FBI.

THE COURT: Overruled if it has to do with Resnick's reporting for a pre-induction physical, nothing

else from the FBI.

THE WITNESS: No, just using me as a basis of reference, what I knew about --

THE COURT: Where Resnick was?

THE WITNESS: Yes. And why he had not shown up.

Q Did there come a time when Resnick received an order, if you know, for induction into the Armed Services?

A Yes, there did.

Q Do you know whether he appeared for induction?

A He did not.

Q Subsequent to that failure to report for induction, were you contacted by the FBI and Resnick's local draft board?

A Yes, I was.

Q Can you tell us what you told them?

THE COURT: Are you offering that under one of the exceptions?

MR. HARRIS: Yes, your Honor, a statement in furtherance.

THE COURT: Take it subject to connection.

MR. BRETTSCHNEIDER: Can we have a time?

THE COURT: Yes, date and time, if you will.

THE WITNESS: I just remember that it was the winter.

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United States of America

v.

William Sangemino

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New York, N. Y.
April 9, 1975 - 10:45 a.m.

- - -

(Trial resumed; jury present)

THE COURT: Good morning, ladies and gentlemen of the jury. Please be seated.

May I say to you ladies and gentlemen of the jury before we begin that the delay in starting this morning is unfortunate and it is not attributable to any fault or neglect by any of the attorneys or any of the parties to this case or myself. It was one of those things that happened. I do ordinarily try to start on time. I hope we can do better tomorrow.

All right, you may resume, Mr. Harris.

N A T H A N L E M L E R, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. HARRIS:

Q With regard to Government's Exhibits 1 and 2, the two contracts, what happened, if you know, to the original contracts after you executed them?

A One copy was given to my client and one copy --

Q No, the original. There is only one original, I assume.

A Yes. I made up -- it was always done in duplicate. One copy went to the client and one copy to myself.

Q As to the original copy that went to yourself, was that the ribbon copy, the typewriter copy, was it a carbon copy? What kind of copy was it?

A Yes. Yes, sir.

Q Yes what? It was what?

A It was, in other words, only one typing was made, in duplicate. I kept the duplicate. The client got the original.

Q What did you do with the duplicate, the ribbon or carbon copy?

A That was put in my files.

Q At the time your files were taken by the Attorney General of the State of New York, do you know where the carbon copy which was your copy of Government's Exhibit 1 and 2 was?

A They were in the second drawer of my file cabinet.

Q In other words, they were in your files.

A Yes, sir.

MR. HARRIS: Your Honor, pursuant to an agreement with counsel for the defense, at this time I would like to

state for the record that I personally went to the Attorney General pursuant to a subpoena and looked through all the records the Attorney General said he had, seized from the offices of Remedial Education Incorporated. There were no copies of contracts other than the Xerox copy of one, which has been marked, and --

THE COURT: Which one, Mr. Harris?

MR. HARRIS: The Resnick contract.

THE COURT: That is number 2?

MR. HARRIS: No, that is number 1, your Honor.

THE COURT: Number 1 for identification.

MR. HARRIS: That is correct.

Likewise, number 2 was a Xerox copy which was gotten by me from either the Attorney General's records or the portion of the records that the receiver had.

I also was to the receiver for Remedial Education Incorporated and went through his records.

The Attorney General's records and the receiver's records do not reflect any original or carbon or ribbon copies of either Government's Exhibits 1 or 2.

THE COURT: Is it so stipulated?

MR. BRETTSCHNEIDER: So stipulated, your Honor.

THE COURT: Members of the jury, a stipulation has the force of evidence and may be considered by you with

the same force and effect as you would consider it if a witness had been brought, placed upon the stand, and had testified in accordance with whatever facts are contained in the stipulation between the attorneys.

I would also say to you, to amplify the statement just made, the Attorney General to whom reference is being made means the Attorney General of the State of New York. And when Mr. Harris mentioned a receiver, he is referring to a person who was appointed by the New York State courts to administer the affairs of this corporation which has been mentioned.

Am I correct in that?

MR. BRETTSCHNEIDER: That is correct.

THE COURT: That is a New York State court-appointed receiver.

MR. HARRIS: That is correct, your Honor.

MR. BRETTSCHNEIDER: I assume so.

MR. HARRIS: I know that to be a fact. I have seen the order.

MR. BRETTSCHNEIDER: Judge, may I just speak to him for one second, so we can save some time?

THE COURT: Yes.

(Conference between Mr. Brettschneider and Mr. Harris.)

MR. HARRIS: I would also like to add that both the receiver and the Attorney General indicated to me that they did not destroy any records they seized.

THE COURT: All right.

MR. BRETTSCHNEIDER: Thank you very much, Mr. Harris.

MR. HARRIS: Your Honor, at this time I would like to read to the jury Government's Exhibit 1, and just a portion of 2.

THE COURT: Have they been received in evidence?

MR. HARRIS: I believe they were yesterday.

THE COURT: All right.

MR. HARRIS: Subject to the clarification which has just been received.

THE COURT: All right.

MR. HARRIS: On the letterhead --

MR. BRETTSCHNEIDER: Excuse me, Judge. They were marked for identification. I have no objections to the authenticity, which is what we agreed. I would make my objection on the question of relevance of this particular contract as with respect to this defendant, the same as I have made throughout.

THE COURT: You may have a reserve motion to strike as to that.

* * *

* * *

Q Answer that question, please.

A That I would -- please tell the major that I cannot see him until after the 1st of January, that we are a little tight for cash. I can't put it any other way, sir.

MR. HARRIS: Your Honor --

THE COURT: You wanted your secretary to tell him this over the phone?

THE WITNESS: Yes.

MR. HARRIS: I would just like the jury to look at the rest of the exhibit, if they care to.

THE COURT: While they have it, they may look at it briefly.

All of you know at the end of the trial you will have a right to request, by sending a note out of the jury room to the Court, that you want to look at exhibits later.

(Pause.)

Q Did you ever have a client named Richard Falcoff?

A Yes, sir.

Q Would you tell us when he became a client of yours?

A As near as I can place it offhand, sir, it would be some time in 1970.

Q When you first agreed to take Falcoff as a client --

MR. BRETTSCHNEIDER: I object to that, if your

Honor pleases. It is not his testimony.

THE COURT: It is conclusory, isn't it?

MR. HARRIS: He said he had a client named Richard Falcoff.

THE COURT: So take him back to the conversation when he first retained him.

Did Mr. Falcoff come and consult you?

THE WITNESS: Yes, sir.

THE COURT: Give that conversation; state who was present, when it was, where it was.

MR. HARRIS: I am not interested in that conversation.

Q Did you agree to perform services for Falcoff?

THE COURT Did you tell Mr. Falcoff you would perform certain services for him?

THE WITNESS: Yes.

THE COURT: Objection is sustained.

Did you tell him that?

THE WITNESS: Yes, sir.

Q And what services did you tell him you would perform for him?

MR. BRETTSCHNEIDER: If the Court pleases --

THE COURT: Overruled.

MR. BRETTSCHNEIDER: Your Honor has directed he is supposed to say where it took place.

THE COURT: Of course. That goes for any conversation. Find out when and where he told it to him and if it was in the presence of anybody.

Q Where was it you told Mr. Falcoff you would perform services for him?

A In my office.

Q And who was present?

A A member of Mr. Falcoff's family that I don't remember whether it was his mother or father.

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Q When, as best as you can recall did these conversations take place?

A Sometime in 1970, sir.

Q What did you tell Falcoff you would do for him?

A Get him a Selective Service deferment.

Q Was he interested in any college placement or --

MR. BRETTSCHNEIDER: I object to that.

THE COURT: Sustained as to form.

I will take the conversation.

Q Tell us what Mr. Falcoff requested.

A Just Selective Service deferment. He had no educational problem.

Q At the time you met Mr. Falcoff, did you know what his occupation was?

A I was told then, but I just do not recall at this moment.

Q Did there come a time when you performed any services for Mr. Falcoff in regard to Selective Service?

A I spoke with Major Sangemino about the matter.

MR. BRETTSCHNEIDER: May I ask for the dates or times when these conversations took place.

THE COURT: That is the next question.

MR. HARRIS: That was already asked.

THE COURT: He is saying he spoke to him.

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Q When and who?

A Immediately after collecting the fee, but I do not remember the date, sir. I'm sorry.

THE COURT: Did you speak in person, or the phone, or what?

THE WITNESS: On the telephone, sir.

Q What, if anything, did you do as a result of your conversation with Major Sangemino?

A I had the registrar visit Dr. Wesolowski.

Q What was the purpose of that visit?

A To arrange for there to be some medical defect that would be acceptable for deferment.

Q What defect was arranged for, if you know?

A Well, as I recall it, sir, there were two: Originally it was for a polynodal cyst; ultimately it was for epilepsy.

Q Did you make any payment to Major Sangemino in regard to the Falcoff case?

A In the case of Falcoff, if I recall correctly, sir, I made two payments.

MR. BRETTSCHNEIDER: I object to "if I recall correctly." Either he knows or he doesn't know.

THE COURT: Every witness testifies to his best recollection.

Do you have a recollection?

THE WITNESS: Yes, sir.

THE COURT: Proceed.

Q Do you know what the amount of the payments was?

A I think, in total, somewhere in the neighborhood of $1500.

Q I show you what has been marked as Government Exhibit 6 for identification. I ask you if you can identify that.

A Yes, sir.

Q What is it?

A It is a Selective Service record.

Q Whose record is it?

A Mr. Falcoff's.

THE COURT: Do you know that?

THE WITNESS: I have seen it before, sir.

Q The same Mr. Falcoff who was your client?

A Yes, sir.

MR. HARRIS: Your Honor, at this time I offer this. I think counsel and I have agreed that there will be a stipulation as to its authenticity, that it is an actual Selective Service file.

MR. BRETTSCHNEIDER: So stipulated.

THE COURT: It will be received.

(Government Exhibit 6 received in evidence.)

MR. HARRIS: Your Honor, I would like to read certain portions of this to the jury.

THE COURT: You may do so, and when you have finished reading, if Mr. Brettschneider wants to designate any other portions to be read at this time, to assure completeness, he may do so, or he can reserve and read later.

(Mr. Harris read to the jury from Government Exhibit 6 in evidence.)

MR. HARRIS: Your Honor, at this time I have, and would offer, a certified copy of a New York State record of a Richard Falcoff at 565 East Pine Street, New York, New York, with a birthdate of November 2, 1949.

I think counsel has also stated as to its authenticity --

THE COURT: New York or Long Beach?

MR. HARRIS: Excuse me. Long Beach.

MR. BRETTSCHNEIDER: If the Court please, may we finish first with the other exhibit?

MR. HARRIS: I am finished with it.

THE COURT: When you read part of an exhibit your adversary may read any part or wait and read it later.

MR. BRETTSCHNEIDER: I wish to read with regard

to the encephalograph of Richard Falcoff dated May 11, 1959, Richard Falcoff at the age of 9.

MR. HARRIS: If you will wait I will find it.

MR. BRETTSCHNEIDER: I may refer to it later, but that's the only one I want to read from.

MR. HARRIS: I'm not sure what it is.

MR. BRETTSCHNEIDER: I will let Mr. Brettschneider find it then, your Honor.

(Pause)

MR. BRETTSCHNEIDER: May we approach the bench, your Honor?

THE COURT: Yes.

(At the side bar.)

MR. BRETTSCHNEIDER: I am advised by my client, who reviewed these records and copied the number of the encephalogram, which is a test of the brain, and the date, that it was in the file at the time he examined it.

MR. HARRIS: It was in Falcoff's file. That's what I just told defense counsel.

MR. BRETTSCHNEIDER: It seems to have disappeared from the file.

MR. HARRIS: I showed it to the defendant under the Brady theory.

I think I know what he is talking about, but it is

not part of the Selective Service file supplied to me by Mr. Falcoff, Sr. about his son.

THE COURT: Where is the document you showed to him?

(Pause)

What is the story with respect to this document? What is your position?

MR. HARRIS: This is not part of the Selective Service file. It was provided to me by Richard Falcoff's father. I showed it to the defendant under the Brady theory and, as you see, there is no stamp that it was ever received by the Selective Service. That's not part of the Selective Service record. It was shown to the defendant in pre-trial.

MR. BRETTSCHNEIDER: I will accept Mr. Harris' statement as to why I thought it was perhaps in the file. Perhaps he is in error. He did see it while reviewing the file.

THE COURT: Let's go forward with something else then.

For the record, so we will know what we are talking about, I think it should be marked Government Exhibit 3597 marked for identification.

xx

(Marked Government Exhibit 3597 for identification.)

(In open court)

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MR. BRETTSCHNEIDER: I withdraw that, your Honor, since it was not part of the original file.

MR. HARRIS: At this time I renew my offer of Government Exhibit 7 for identification.

THE COURT: Is there any objection to Government Exhibit No. 7?

MR. BRETTSCHNEIDER: No, your Honor. Of course, there is the objection that it is not binding on the defendant.

THE COURT: Is there a problem about the date? That's all I am asking. It is a public record issued May 26, 1970. That's the reason I made the inquiry.

MR. BRETTSCHNEIDER: No objection.

THE COURT: It will be received.

xx (Government Exhibit 7 received in evidence.)

MR. HARRIS: Your Honor, with your permission I would like to read this.

THE COURT: All right.

(Mr. Harris read to the jury from Government Exhibit 7 in evidence.)

MR. HARRIS: Your Honor, at this time I have premarked Government Exhibit 7A for identification, which is an official record relating to Richard Falcoff's birth date, November 2nd. As to its authenticity, I think we have

a stipulation.

MR. BRETTSCHNEIDER: Yes, sir, I stipulate to that.

MR. HARRIS: I show it to counsel.

MR. BRETTSCHNEIDER. I have seen it, your Honor.

MR. HARRIS: I offer it in evidence.

MR. BRETTSCHNEIDER: No objection.

THE COURT: It will be received.

xx (Government Exhibit 7A received in evidence.)

b2 MR. HARRRIS: I would like the Court's permission to read portions of this to the jury.

THE COURT: Yes.

(Mr. Harris read to the jury from Government Exhibit 7A in evidence.)

BY MR. HARRIS:

Q I show you what has been premarked as Government Exhibit 10 for identification. I ask you if you can identify it?

A Yes, sir.

Q What is it?

A That is a logbook kept by the guards at 26 Federal Plaza.

Q How can you identify it?

A Because I have seen it many times.

Q Can you identify that specific book?

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Exhibits 11, 12, and 13 in evidence.)

BY MR. HARRIS:

Q When did you begin to cooperate with the federal government in regard to this case?

A Early in January of 1974.

Q After you began to cooperate, did you ever have occasion to engage the defendant in conversation?

A Several occasions.

Q Were any of these telephonic?

A Yes.

Q How many?

A You mean speaking to him on the telephone?

Q That's correct.

A At least once, sir.

Q Did you have any face-to-face meetings with the defendant after you began to cooperate with the government?

A Yes, sir.

Q Let me call your attention to the meeting you had with the defendant face-to-face. Were those meetings tape recorded?

A Yes, sir, they were.

Q Where was the tape recorder that tape recorded them, if you know?

A On my body.

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you a limiting instruction concerning this paper here which is number 9 for identification and now being received. That is a paper where someone has typed up what they believe they heard in listening to the tape itself. It purports to be a transcript of the tape.

The tape itself is what the evidence is. The transcript is just permitted to assist you in listening to the tape so if there is any difference of any kind between what you yourself hear on the tape and the words which have been transcribed on the paper, you are to regard the paper as being only secondary and just given to you for your use or assistance in listening to the tape, and the tape itself, what you actually hear, is the evidence in the case. This will just be received as an aid.

xx (Government Exhibits 8 and 9 received in evidence.)

MR. HARRIS: I request permission to play this for the jury, but I would prefer to defer until after lunch, your Honor.

THE COURT: Immediately after the luncheon recess we will play the tape.

BY MR. HARRIS:

Q Have any promises been made to you by the government of the United States in return for your testimony here today?

A Yes, sir.

Q Please tell us what those promises are?

A There were a few promises.

Q Let's go through them one by one and tell us what each promise was.

A The promise was, number 1, that all of the information that may be uncovered as a result of my information to the federal government would be presented to the authorities in Nassau County in an attempt to overcome my conviction, and the other one was that I would not be prosecuted for my involvement in this matter.

Q Did the United States Government through the office of the United States Attorney also promise you that your cooperation in this matter would be made known to the authorities in Nassau County?

A That's what I made reference to.

Q At the time of your sentence was a statement made by myself?

A Yes.

Q You were present in court where a document was presented to the sentencing judge requesting either a new trial or postponement of the sentence?

A On the basis of newly discovered evidence.

Q Did I present the document or did I present a letter?

A A letter, sir.

Q Who was that letter from? Was it from our office?

A That letter was from Dr. Adam Wesolowski.

Q In other words, let us be clear. I presented a letter --

MR. BRETTSCHNEIDER: If the Court pleases --

THE COURT: Yes, the witness should testify.

Q Is that letter from my office?

THE COURT: But you asked him what the promises were.

MR. HARRIS: Yes.

THE COURT: What you did in the past. You ought to cover the promises in the future, and then you can bring out whatever you did in the past for him.

Q In pursuance to that promise, did I appear at the day of your sentence?

A You certainly did.

Q And did I make a statement regarding your cooperation?

A Yes, you did.

Q And did I present a letter to the Court?

A Yes, you did.

Q Was that a letter I had written?

A You had written? No, sir.

Q What was the letter, if you know?

A This letter was a letter written by Dr. Adam Wesolowski of Mercy Hospital, Rockville Centre, Long Island, to the Selective Service Board, requesting --

THE COURT: No, don't tell the contents of the letter.

THE WITNESS: All right.

THE COURT: Was this a letter that was obtained by the U. S. Attorney's Office --

THE WITNESS: Yes, sir.

THE COURT: -- in order to help you out in some way?

THE WITNESS: No, sir. It was a letter that was uncovered during the investigation of this matter.

THE COURT: Was he presenting it as you understand it in order to help you out in some way with your problems?

THE WITNESS: Yes, sir.

THE COURT: Other than the promise that you would not be prosecuted for your role in this matter, the promise that the United States would make your cooperation with the United States Government known to Nassau County, and the promise that the Government would turn over any record they uncovered to Nassau County, were any other promises made to

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you?

THE WITNESS: No, sir.

Q One other question. You came forward, you said, in January of 1974?

A Yes, sir.

Q The first time you ever came to the United States Attorney's Office, what Assistant United States Attorney did you see?

A The first time?

Q Yes.

A A Mr. Naftalis.

Q No, the United States Attorney's Office in this building.

A You.

Q What other Assistant have you dealt with from January of 1974 until the present date?

A Just you.

THE COURT: What about Mr. Naftalis?

THE WITNESS: Well, I went to the wrong building, sir; I went to --

THE COURT: All right. Did you discuss your matters with Mr. Naftalis?

THE WITNESS: No.

THE COURT: All right.

THE WITNESS: When I told him what the nature of it was, I was told that this was the place.

THE COURT: All right.

MR. HARRIS: Your Honor, other than the tape, I have no further questions of this witness.

THE COURT: Would counsel approach the side bar, please.

(At the side bar)

THE COURT: Gentlemen, you know, jurors have changed from the time I have been at the bar. It develops that these jurors find that the only decent food they can get in this neighborhood and get back on time is that which is served by the General Services Administration, of all places, on the fifth floor of 26 Federal Plaza --

MR. BRETTSCHNEIDER: It is on the sixth floor, your Honor.

THE COURT: -- on the sixth floor, and that is where they have been eating. Is it all right if they go there? I ordinarily watch them very closely.

MR. BRETTSCHNEIDER: I don't care, Judge. I have no objection.

MR. HARRIS: I would just request that no parties to the case --

MR. BRETTSCHNEIDER: I won't eat there; you have

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A That is absolutely untrue, sir.

Q How could your being in the U. S. Attorney's office affect the outcome of your trial in Nassau County?

A Because it was my impression that the federal government would insist that the activities involving Selective Service in which I was involved would force the parents to acknowledge the kind of work I was doing for them.

Q And did the federal government force that?

A No, sir, they did not.

Q Was that promise made to you by Mr. Harris?

A No, it was not.

Q Were any other promises made to you by Mr. Harri in respect to your testifying?

A Yes, there were.

Q What were they, sir?

A I was promised that during the course of the investigation, if anything came up to substantiate the statements I made it would be brought to the attention of the Nassau County authorities.

Q And did you bring up any evidence to him to substantiate the statements you had made to him?

A The evidence was not available, sir, at the time of my trial. There were two missing cartons of

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evidence.

Q But they were later found, weren't they?

A After my trial and sentence, sir.

Q Now, there was no promise made of any other kind?

A Other than I would not be prosecuted for my activities in connection with Selective Service.

Q And that promise was both in this federal district and the Eastern District?

A I had no business with the Eastern District at all, sir.

Q Well, you by your own testimony indicated that you made up false records for people for Selective Service, for Dr. Teitelbaum?

A Yes.

Q And that you and Dr. Teitelbaum entered into a conspiracy to commit these crimes?

MR. HARRIS: Objection. It calls for a legal conclusion.

THE COURT: Yes, I suppose it does. Objection is sustained.

Q You and Dr. Teitelbaum both agreed with each other to make up phony reports for the Selectice Service?

A With others.

Q And that you know is a crime?

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everybody you had a Doctor of Philosophy?

MR. HARRIS: Objection to the form of that question.

THE COURT: Yes, that is sustained. There is no proof he told them after he was convicted he had a Doctor of Philosophy.

Have you?

THE WITNESS: No, sir.

MR. BRETTSCHNEIDER: If the Court will bear with me one moment.

Q After you went to prison for this saying that you had a Doctor of Philosophy, you told no one else about being a Doctor of Philosophy?

A I just let the record before that stand for itself, sir, and never discussed it beyond that.

Q Sir, on March 19, 1973, that was after your conviction in Nassau County?

A March, 1973, yes.

Q Do you know a judge by the name of Alexander Berman?

A Alexander Berman? A judge? No, sir.

MR. BRETTSCHNEIDER: May I have this marked for identification?

THE COURT: Mark it.

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to be rejected and to secure military deferments for the sons of my clients."

That's not what you just asked me.

THE COURT: Don't argue with the attorney.

THE WITNESS: I'm sorry, your Honor.

Q This document I showed you is your letter, is it not?

A The one I just had here, yes, sir.

MR. HARRIS: Are you still referring to Government's Exhibit 3559?

THE COURT: Yes. It is for identification.

Q Did you ever say to anybody, "I was terribly guilty of the charges for which I was not indicted"?

A Yes, sir.

Q "And not indicted because it would have endangered the freedom of judges, congressmen, and very prominent people"?

A Yes, sir.

Q Whomwere you referring to? They are all part of the conspiracy.

A May I give those names?

Q Sure.

THE COURT: Which conspiracy are we talking about? Bribing people to get into medical schools or bribing people

to get out of the Army to evade the draft?

THE WITNESS: Both, sir.

THE COURT: I think we ought to limit it to the draft case. The medical schools represent a whole different story.

Reframe the question with respect to Selective Service.

MR. BRETTSCHNEIDER: I will withdraw the question, your Honor.

BY MR. BRETTSCHNEIDER:

Q Did you testify under oath that you paid the Dean of the Chicago Medical School $30,000 as a bribe?

A No, sir. It was much more than that, sir. Much more than that. $170,000.

Q Did you ever get back any of that bribe money?

A No.

Q Did you ever have any checks of that money?

A In my cell at this moment I have $507,000 in cancelled checks.

THE COURT: Let's stick with Selective Service. The medical school bribery is a whole other case.

MR. BRETTSCHNEIDER: They used the term and Mr. Harris indicated this was part of it.

Q Do you know a Dean Rossi?

A I certainly do, sir. He is the Dean of St. John's University.

Q Did you put $7,500 in his desk drawer?

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A $1,000 is all I ever testified to.

Q You testified on direct examination that you were an expert.

A Yes.

Q In this field?

A Yes.

Q Whom did you speak to in the federal government? What congressman in the federal government did you talk to?

THE COURT: We will stick to Selective Service. I'm not going to have any more testimony about getting people into medical school. Let's stick with Selective Service.

No more arguments. He is not here and he cannot come in and defend himself. I want to stick with the Selective Service, the draft cases, and I am not going to take any more questions from you about his criminal activities in connection with medical schools or dental schools.

Let us proceed.

BY MR. BRETTSCHNEIDER:

Q What experience had you had up to the time you

entered the field of Selective Service?

A Selective Service? Absolutely none, sir.

Q When you went to Major Sangemino for the first time, when was it?

A Late in 1968.

Q What date?

A Sir, I can't possibly remember that. I can't possibly remember the date or the day of the week, sir.

Q You have a card file of all your cases, don't you?

A I had a card file.

Q On those cards it gave all this information?

A Every single word, sir.

Q That card file was in your possession?

A It was, sir, up until the eve before my office was closed.

Q When was your office closed? What day?

A My office was closed in 1972.

Q That's 365 days. What day of the year, sir?

A I do not know, sir.

Q This card file, where it it now?

A Your guess is as good as mine. I wish I could find it.

Q What happened to it?

A I gave it to my daughter the night before my

closed. I gave her a shoebox, two shoeboxes, as a matter of fact, with these record cards, one with the medical school-dental school and graduate school, and one separate one for Selective Service.

Q Weren't you supposed to turn over all these files to the Attorney General's office?

A No, sir.

Q Did you ever ascertain what happened to all these card files you had?

A Sir, with possibly a two-minute telephone conversation I do not think I have spoken with my daughter once since all of this trouble started.

Q If you were not talking to your daughter why did you give all these records to her?

A Because --

MR. HARRIS: Objection to the form of the question. This is since the trouble started, he said, and he said he had not spoken to her.

THE COURT: I will let him answer why he gave his daughter the records.

A My daughter was working for my office at that time. It was only after the office was closed that my daughter discontinued a relationship with me and testified against me at my trial.

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Q What about Mrs. Blicksilver?

A What about her?

Q You were married to her? She was your wife. Why didn't you give her the file?

A I was not married to her, and you know it.

THE COURT: No more "why" questions.

Q On November 4, 1970, did you marry Mrs. Blicksilver in Connecticut?

A Yes. In a big mismarriage.

Q Did you swear you had not been married before?

A No. I didn't swear that I had not been married before. Mrs. Blicksilver swore that. You look at your record.

Q Did you swear you were divorced?

A Yes, sir, I did.

Q So you lied under oath then?

A Yes, I did.

Q Mrs. Blicksilver and you were supposed to be partners in this firm.

A She was a stockholder and secretary of the corporation and an employee of mine.

Q She was an officer of the corporation also?

A Yes.

Q Why didn't you give the records to her?

MR. HARRIS: I object.

* * *

* * *

A To be very honest with you, because I got the impression from his attitude that it was not too different from the medical schools I had been dealing with.

Q What gave you that impression?

A There was a certain comraderie at our initial meeting that I didn't run into when I met with those people who could not be seen.

Q Incidentally, in 1968 and 1967 did you list that as a deduction on your taxes?

A No, sir.

MR. HARRIS: Objection, your Honor.

THE COURT: Sustained on the ground of the date. It has been answered and I will let the answer stand.

Q How many times did you go up to Major Sangemino's office?

A Over a three and a half year period dozens and dozens of times. They were two offices.

Q Sir, you testified that you gave him well over $50,000.

A Absolutely.

Q Most of the payments were what? In what denominations?

A Always cash.

Q What denominations? What were the majority of them?

$300 or $500?

A 50 and $100 bills.

Q What was the total amount of those payments?

A Well over $50,000.

Q How much was the average payment?

A $1,000, $1,500.

Q All of these payments you marked on your white cards; is that correct?

A Absolutely.

Q And those cards are missing?

A Yes, sir.

Q Now the payoff of $50,000, that would mean that in that three-year period you were operating from '68 to '71 at an average payment of $1,000?

A No. It was better than $1,000. It was $1,200, $1,300, or $1,500.

Q It must have been at least 60 or 80 payments then?

A I don't think it was that.

MR.HARRIS: I object to that.

THE COURT: It has been answered. He says he doesn't think so.

Q How many times did you go to his office in 1971?

A A dozen times.

Q Did you bring money each time?

* * *

* * *

THE COURT: You asked a question and Mr. Harris has answered your question, as I understand it.

Do you have any other paper having to do with Petro?

If you want to look at the end of the day, you can be sure that that is all right with me.

MR. HARRIS: I will double check.

THE COURT: At the end of the day.

You see, it is two separate things: it is what the government has and what he has. It is one thing to ask him what he has. You may do that.

MR. HARRIS: The government is in possession of whatever Mr. Lemler had.

MR. HARRIS: Absolutely not.

THE COURT: Find out what he gave who.

Q With reference to Petro, what is his full name?

THE COURT: Did you give any Petro records to the government?

THE WITNESS: I gave no records to the government, sir.

Q Did you give any records to the State Attorney General?

A No. They were taken from me.

xx (Government Exhibit 3598 marked for identification.)

Q Did you get a receipt for those records?

A No, sir.

Q What do you mean when you say they were taken from you?

A Two gentlemen came into my office, a Mr. Vincenti, White, who showed me he had identification as an investigator for the State Attorney General, and another gentleman who identified himself as connected with the receiver, temporary receiver, appointed by the state court in New York, and he showed me a court order which entitled them to take everything out of my office. I sat there and watched them do just that.

They permitted me to six, seven, or eight books that were-- of all the books that were on my bookcase they permitted me to keep six, seven, or eight of those.

They left my office with four cartons, four large cartons, of every single record. They went through the closets; they went through the filing cabinets; they went through the desk drawers, and they took everything that was not nailed down.

THE COURT: I think this is a good time to break for the day.

Members of the jury, we are going to resume at 10:30 with this case tomorrow, so kindly be back in the jury

* * *

* * *

records.

MR. HARRIS: Your Honor, once again Mr. Brettschneider is almost correct. He worked for the Drug Enforcement Administration; he received expenses. He received no payments for his work as such.

THE COURT: He may be asked if he received reimbursements for expenses from any branch of the government.

MR. HARRIS: This man is in West Street and his life can very easily be put in danger by extensive examination in this area.

THE COURT: As the Court understands it, the last answer is truthful according to the government's papers. If he did work without fee for the government and received reimbursement of expenses for it, he may be asked that and the dates.

You just go ahead. You build him up as the kind of fellow who works free for the government. You just go on and do that.

MR. BRETTSCHNEIDER: Fine.

(In open court.)

BY MR. BRETTSCHNEIDER:

Q Dr. Lemler, have you ever received any money from the federal government?

A Yes, sir.

* * *

THE COURT: That is true. I think with a proper foundation --

MR. HARRIS: I would have no objection.

THE COURT: All right.

(In open court.)

BY MR. BRETTSCHNEIDER:

Q Dr. Lemler, did you ever write a letter to Mr. Harris in which you mentioned the term "amnesty"?

A I may wel have, sir.

Q Do you recall it?

A Sir, I have been in prison 13 months and I have written 6,000 letters in that 13 months, and if you are trying to get me to spell out what particular letter or what particular time, I couldn't, but I will concede to it if I see it.

MR. BRETTSCHNEIDER: May the record indicate I am handing the witness Government's Exhibit 3564.

THE COURT: Couldn't you go on to something else and let him read this during the recess? It is awfully long and it will hold us up. I don't insist you do that. It is a seven-page letter.

MR. BRETTSCHNEIDER: I am only referring to that one page, Judge.

THE COURT: All right. What is the question--

* * *

A Yes, sir.

Q And then what did you do?

A I made an appointment to meet them at a time some time later -- no, sir, the next day, the next day. I made an appointment to meet them outside the South Oaks Hospital.

When I refer to "them," I refer to the Major, his wife and his mother.

THE COURT: This is Major Weiss you are talking about?

THE WITNESS: Major Weiss, sir.

BY MR. BRETTSCHNEIDER:

Q Did you call Teitelbaum?

A Several times, sir. I was in constant communication with him about the case.

Q Now, who suggested this question of the mental problem of the Weisses?

A Major Sangemino.

Q And you talked this over with Dr. Teitelbaum?

A Yes, sir.

Q Then did you tell -- what did you do? Who did you tell what the problem was?

A Sir, I know your problem and I know --

THE COURT: No, no.

* * *

* * *

Q Are you sure of that?

A Not in this specific ase.

Q Now where did you pay the hospital?

A At the hospital.

Q That very night?

A That very day, sir. No one walks in there without paying in advance.

THE COURT: Even if they're crazy?

THE WITNESS: That is why they go in there, sir.

Q Incidentally, is this the woman they attempted to give shock treatments to?

A No, that was Mrs. Petro. That was a cross in signals.

Q Now, did you send any papers or any documents over to Major Sangemino?

THE COURT: In connection with Weiss?

Q In connection with the Weiss case?

A I believe so.

Q What did you send over?

A I think a photostat of his shipping orders and a photostat of the request for compassionate consideration from the Red Cross. Again I just said I think , sir.

Q I see.

Now, what if anything did Major Sangemino do

in this case?

A I have no way of knowing, sir, but he rubbed a magic lamp --

Q And for rubbing this magic wand you gave him a thousand dollars?

A Yes, sir.

Q And where did you give him this money?

A In the urinal in his building, sir.

Q What day?

A I don't know.

Q What year?

A In 1969.

* * *

A Yes, sir.

Q Incidentally, did Dr. Teitelbaum have anything to do with the Military?

A Yes, sir.

Q What relationship does he have with the Military?

A The very first day --

THE COURT: No, just tell us --

A Well, he told me he was a chief psychiatrist for the United States Army.

THE COURT: Is that what he told you?

THE WITNESS: Yes.

THE COURT: Or did he tell you he was a former chief psychiatrist?

THE WITNESS: A former chief psychiatrist.

BY MR. BRETTSCHNEIDER:

Q Now, did you ever question him with reference to any of your Selective Service problems or Military problems of people in Service?

A When you say question him -- in terms of him getting them out?

Q Did you have conversations how to get people out?

A Oh, we discussed it many times, sir.

Q And as a psychiatrist or former chief psychiatrist

with the United States Army he has done many of these releases from Service?

A I don't know that to be so, sir.

Q Well, weren't you interested in finding out?

A You are asking me now what he has done, that he has done many of them, and I don't know that, sir.

Q Well, you were in the business, you say, of getting people out of Service?

A Yes.

Q Who were on active duty?

A Yes.

T4 Q And you now have a psychiatrist who is a former-- he told you he was a former chief psychiatrist of the United States Army?

A Yes, sir.

Q Did you have any conversations with him as to what would be the procedure for getting a man out of service?

A Yes.

Q And when did you have those conversations?

A The very, very first day I met him.

Q Where did you meet him?

A In my former office.

Q When was that?

A I was located at 123 --

THE COURT: When? What year?

THE WITNESS: 1967 or 1968. I was subleasing the office. I was moving from one office in the building to larger quarters in the building, and the landlord brought Dr. Myron Teitelbaum and his wife to me at my office for the possibility of subleasing my office for him because I was taking larger quarters.

He explained to me that he had just been discharged from the Army. He told me what he was doing in the Army, and I told him the nature of my work and I said possibly we can get together one day.

* * *

* * *

entrance?

A Yes, sir.

Q And during the periods that those books covered that you saw, identifying your signature, how many times did you go in and out of the building during those periods?

A 50 or 60 times.

Q How many times does your name appear in those books?

A I have no way of knowing, sir. Only some books were shown to me.

Q Now, on each of those 50 or 60 times, did you bring money with you?

A No, sir.

Q How many times did you appear at 26 Federal Plaza with money?

A Maybe 35, 36 times, 40 times.

Q And the payments were what, a thousand dollars?

A Sometimes a thousand, sometimes a great deal less and sometimes considerably more.

Q How do you figure the sum of $50,000 or more?

A Because I counted it up by my white cards the night before they were taken from me, the night before my office was taken over.

Q Did you take all this on any machine?

gwhll Lemler-cross

A I seem to recall that I did, sir, an adding machine.

Q What did you do with that type?

A That might have been attached to the first card in the file under a paper fastener, a paper clip. It might have been.

Q You were removing the tapes for security reasons--not tapes, these cards, weren't you, sir?

A No, sir, not really, no, sir. In the back of my mind -- I was in this business about three and a half years, four years, and always I knew that one day I might have to talk with Internal Revenue agents, and I wanted as carefully as possible to have some verification of the nature of my business.

Q And you were going, as the verification, to tell them you spent $50,000 in bribes to IRS, is that correct?

A Yes -- I never bribed the IRS, sir.

Q You misunderstood me. I am sorry, sir. You were going to tell the IRS you spent $50,000 for bribes?

A Well, if that would be the word, yes. I was just going to give them an expense account, sir.

Q What about the moneys paid to Dr. Teitelbaum? He didn't do anything. That was expenses, too?

* * *

EXCERPTS OF TRANSCRIPT OF TESTIMONY DATED APRIL 11, 1975

* * *

Q At the Pentagon they had the records of Lieutenant Petro?

THE COURT: Did you know that; did you see files or records?

THE WITNESS: I saw it and I can describe the circumstances under which I saw it.

THE COURT: On your first visit to the Pentagon?

THE WITNESS: Yes, sir.

Q Now, do you have any records or conversations with Mrs. Petro?

THE COURT: By "records" you mean tapes?

MR. BRETTSCHNEIDER: Yes.

Q Any records or any evidence of any of your conversations? Do you have ny or do you know of any?

A I know of them.

Q Did you make a tape recording of your conversation with Mrs. Petro?

A I did.

Q And when was that made?

A The second time around.

Q Did you have a lawful wiretap on your telephone at that time?

MR. HARRIS: Objection.

THE COURT: Sustained. How could he tell

whether it is lawful or not? Don't ask that kind of question.

Q Did you have a beeper or recording device to notify anybody that a conversation was being recorded?

THE COURT: Sustained.

Q Is there such a tape in existence?

A Yes, sir.

MR. BRETTSCHNEIDER: If the Court pleases, I have not been shown it nor has it been given to me at any time.

THE COURT: Step to the side bar.

(At side bar.)

THE COURT: What is the basis for demanding the tape?

MR. BRETTSCHNEIDER: If the Court pleases, this is a conversation between him and a co-conspirator, and she is named as a co-conspirator in the indictment. The minutes of the grand jury reflect it and they have a copy of it. I was advised there were no tapes of anybody other than these three we have seen.

THE COURT: The only tapes you are entitled to under my orders are Sangemino's. There has been no proof that she was a conspirator. Rather the testimony seems to indicate she was a customer of the conspiracy or her

husband was.

MR. BRETTSCHNEIDER: She is named in the indictment as a co-conspirator.

THE COURT: That is not proof.

MR. HARRIS: Not only was the Court's order for tape recordings of Sangemino but if Mr. Brettschneider carefully reads his own demands for discovery, he demands to discover only tapes in which the voice of the defendant is heard.

MR. BRETTSCHNEIDER: I would like to see the tapes.

THE COURT: I see no harm in showing him the tapes. Are you able to get the tapes during the next recess?

MR. HARRIS: Yes.

THE COURT: All right.

MR. HARRIS: Your Honor, since Mr. Brettschneider made his demand in open court, I would request the jury be notified that the Government has not breached any obligation to provide him --

THE COURT: I think he may have opened the door to the tapes, and after I have had a chance to look at the transcript I will see whether you can bring them in on redirect examination.

* * *

A I could have.

Q And that he told you he had to leave from McGuire Air Force Base overseas?

A I just don't remember that, sir.

Q Well, did you tell him that the hospital did not want to release his mother on the morning of the day that he was supposed to leave?

A That is totally inconsistent, sir. His mother was not in the hospital at that time.

Q Well, was that the first time then?

A He was not a lieutenant the first time when his mother was in the hospital.

Q What uniform did you see him in?

A I saw him, I believe, in both uniforms, but at the time his mother was in the hospital he was a private.

Q What kind of a uniform was he wearing at the time?

A He was wearing the new cut uniform. It was not an Eisenhower jacket.

Q What color was it?

A Green.

Q Incidentally, the Pentagon, it is quite a massive building, is it not?

A Yes, it certainly is.

THE COURT: We all know that. Let's not prolong

the agony. Let's stick with this case.

Q Was there anybody else with an Eisenhower jacket uniform in the Pentagon?

A As I recall, sir, I saw every description of military uniform there, including CKC's.

Q Khakis, and this is in February?

A Yes, sir.

Q Now, sir, in reference to Resnick, when for the first time did you meet Resnick?

A In 1970.

Q And Resnick was the case in which you referred to the government's exhibit of your records of the times, the telephone calls, is that correct?

A I don't understand your question, sir.

THE COURT: I don't either. Frame a new one.

MR. BRETTSCHNEIDER: Withdrawn.

Q You spoke earlier about telephone conversations and notes in a telephone logbook?

A Yes, sir.

Q And you identify them as the calls of Resnick?

A Yes, sir.

Q And is that the Resnick that you handled for --

A I only knew one Resnick, sir.

Q When did you meet Mr. Resnick?

* * *

* * *

Q When did you write it?

A I say it bears no date, so I don't remember when I wrote it.

Q In that letter did you say:

"Mrs. Resnick was complaining against me in a grand larceny basing her complaint that the fee paid to me" --

THE COURT: What page are you on?

MR. BRETTSCHNEIDER: 5, top of the page, described "random thoughts."

THE WITNESS: "Random thoughts," yes.

Q Would you read what you wrote?

MR. HARRIS: Objection.

THE COURT: Yes. Please ask another question.

Q Did you write "Mrs. Resnick" --

MR. HARRIS: Your Honor --

THE COURT: There is no foundation to go into the 3500 material until you ask him the underlying question and find an answer you are not satisfied with. Please ask him a question about Mrs. Resnick. If the answer is inconsistent with this exhibit, then you can call his attention to what he wrote.

MR. BRETTSCHNEIDER: He has done that already.

THE COURT: No. Ask another question.

* * *

Q And it says:

"Close member of family assure that Ed Resnick will be going to medical school."

A Are we on February 24?

Q That's what I am reading here.

A What is your question you just said?

Q It makes reference to calling the Board and telling them Edward is going to medical school.

A It doesn't say that. It says -- it's not what I'm reading, sir.

"Close member of family assure that Ed Resnick will be going to medical school."

Q You got $10,000 to get Ed Resnick into medical school?

A Yes, sir.

Q And he was now in Barcelona, Spain?

A Yes, sir.

Q And you are aware that in Spain, or the educational system there, if you go to the school and apply you are admitted?

A That is definitely not true. You picked the one country in Europe where that is not true.

Q Did you send him to the University of Barcelona?

A Yes, sir.

Q And you received $10,000 for that?

A No, sir.

Q You received $10,000 to get him into medical school?

A Sir, if you read this contract it says within the continental United States.

Q Well, who sent him to Spain?

A I did, sir.

Q And you were going to get him into the University of Barcelona?

A No, sir. You are trying to get me to say something that is not so, sir.

THE COURT: Just don't do it. Just answer the questions.

Q At that time you were sure he was going to get into Barcelona?

THE COURT: That time being when?

MR. BRETTSCHNEIDER: Some time at the beginning of 1971.

A No, I was just sure he would have reason to get a further deferment.

Q How would he get a further deferment?

A By just being there and attempting to get into the school.

Q That deferment of attempting to get into the school would have nothing to do with Major Sangemino?

A Yes, it would, sir.

Q Major Sangemino was able to get him into the medical school?

A No, he was able to keep him out of the Army on his promise he would be going to medical school.

Q But that goes to the Local Board; the request for a delay or deferment because a man is about to enter medical school --

A Yes.

Q -- goes to the Local Board, does it not?

A That's where the paper work goes and the decisions are made higher up.

Q Are you sure the decisions are made higher up?

A They were in this case, sir.

Q And what decision was made?

A To make sure that he wasn't inducted until he ultimately got into the school that we were planning for him.

THE COURT: That was not Barcelona?

THE WITNESS: No, sir.

Q What university were you planning to get him into?

A It was not a university.

Q What college were you planning to get him into?

A It was not a college.

Q What medical school?

A Mercy Hospital Medical School.

Q With reference to this call, what did you or anybody do as far as Mr. Resnick was concerned on February 24 1971?

A We were stalling. We were stalling, waiting for his acceptance to the medical school.

Q What medical school -- Mercy College?

A We had applications in many medical schools. The one that he was definitely going to be accepted to never opened, sir. That's why I'm here.

Q In other words, you were going to get him into an accredited medical school --

A Dr. Adam Wesolowski was ging to get him into an accredited medical school, for which I paid $70,000.

Q You paid $70,000 and received only a fee of $10,000 to get him into the school?

A That's right, sir. There are 22 other people who had me indicted for this exact same case that you are talking about. They gave me $240,000, sir, collectively.

THE COURT: You mean Resnick was one of some

20 people?

THE WITNESS: Yes, sir.

THE COURT: All of whom were going to this new school?

THE WITNESS: Yes, sir.

Q Did you ever make a statement to anybody that they were going to intern something like lawyers, or clerk, and after four years they would get their accreditation?

A No, sir, that is taking it out of context again. The school was supposed to be a preceptorial school.

Q What does that mean, sir?

A Preceptorial is very, very much like the law used to have where someone could read the law for X number of years under a qualified attorney and then apply for a bar examination.

This school was going to operate on that premise.

Q And in the State of New York they were going to get accreditation for this type of operation?

A Dr. Wesolowski believed so, and so did Dr. Pellegrino, the State University College of Medicine.

Q But you were an expert in this field. You testified before Congress?

A And I certainly felt that it had an excellent chance in the courts, yes.

Q Now, sir, there were some problems with Mr. Resnick. When did Mr. Resnick first get his draft notice?

MR. HARRIS: Your Honor, are we talking about physical, induction?

MR. BRETTSCHNEIDER: I don't know.

THE COURT: If the witness doesn't understand the question, he can say so.

THE WITNESS: And I don't, your Honor.

THE COURT: Frame another question.

Q At the time they came to you, the Resnicks, did Mrs. Resnick have an induction notice or any notice from the Draft Board concerning Edward?

A No, it was just anticipated.

Q So he had not even been called to the Draft Board, is that correct?

A As far as I know he had received no induction notice. He may or may not have been called to the Draft Board.

Q And before he got anything to do with the draft you went down and gave Major Sangemino money?

A Before he had anything to do with the draft?

No, sir. That would be before he was 18, sir. I didn't even know the major then.

Q Sir, you met the people in '70?

A Yes, sir.

Q And by February 24th, several months had elapsed between the time you saw him and the entry in your log, correct?

A Yes, but if you notice, that log is dated for the year 1971.

Q That's correct.

A I would love to have the telephone books for 1970.

Q You do?

A I would love to have them.

Q I am sorry.

Now, as of February 24, 1971, Edward Resnick still didn't have his draft notice?

A Oh, yes, he did.

Q When did he get his notice?

A Some time around that time. They were getting very, very edgy.

THE COURT: Are you through with this Exhibit 3-A?

MR. BRETTSCHNEIDER: No, sir.

THE COURT: Finish up with it, because I am not going to have the jury holding the exhibit while you are going on to something else. Finish with the exhibit and then I will have the clerk recover the exhibits from the jury.

Q Now the January 8th entry.

A Yes, sir.

Q Did that have anything to do with Selectice Service in any way?

A I don't know that it refers to Resnick at all.

Q As a matter of fact, that was a person asking you --

A It says:

"Call Bill Sangemino re result of barium enema."

Q Didn't he call you as a doctor to ask your opinion with respect to that enema or barium enema his wife had taken?

A Whose wife?

Q Major Sangemino's wife.

A What would I know about the major's wife taking a barium enema?

THE COURT: We will expedite the trial if you could just answer the question no.

THE WITNESS: I just don't understand the question.

THE COURT: Let's see if you understand the question.

This attorney has asked you whether this entry on Exhibit 3-A for January 8 means that the defendant in this case had telephoned you to discuss with you as a doctor the results of a barium enema taken by his wife. It is very easy for you to answer by saying no or yes.

THE WITNESS: No.

THE COURT: All right, no. Let's go on.

Q What did it refer to?

A I don't know, sir, except that we had many draft clients at that time who were taking all kinds of tests, receiving all kinds of treatments and going through all kinds of schemes.

THE COURT: Is a barium enema available as part of a scheme?

THE WITNESS: Yes, sir, if it's documented as part of a medical workup to keep a boy out for a while.

Q Do you know which case it refers to, if any?

A No, sir. But I was told to call after 4.30.

Q Now go down to the item on May 11, 1971.

A May 11, yes.

Q What does that refer to?

A He had not yet heard from whoever it was he was trying to get help for for somebody.

Q Who hadn't he heard from in an attempt to get something from somebody?

A Just what it says here, from his people.

Q Does it say from his people?

A From people.

Q Who was he referring to?

A I would suggest that you ask the major that. I don't know who he was referring to.

Q You testified that this call refers to Major Sangemino.

A Which call?

Q The one on May 11, 1971.

A All you have up here is: "Major." I assume that that's my secretary's way of identify who this call came from.

Q So that you don't know that that call refers to Major Sangemino at all?

A Not from this, sir, except that he is the only major.

Q He is the only major where?

A That would be calling in terms of this, if you

look at the telephone numbers.

Q What is the telephone number?

A 724-4900, Extension 233. I don't know who that is.

Q That's not Major Sangemino. You know his phone number.

A Frankly, I don't, but you are asking me to refer to May 11, and I am referring to May 11, "Major."

Q Whose telephone number is 724-4900?

A I don't know, sir. It's not mine.

Q The June 15th entry.

A The next one, yes.

Q Does that have any relationship to Selectice Service at all?

A Yes, sir. Does it have any -- in connection with what, sir?

Q What connection does that have in relation to Selective Service?

A This is referring to a relative of the major's or a friend or somebody of the major's who is in Central Islip and also having a welfare problem.

Q Didn't you testify on direct examination that the major had called you with reference to a cousin of his who was dying in the hospital?

A Yes.

Q So it had nothing to do with a welfare problem?

A No, sir, it had to do. They couldn't afford bills or something. I know that there was a time when the major was discussing one of his personal problems.

Q In other words, he was coming to you?

A That's right, sir.

Q And he came to you as a doctor, did he not?

A No, sir. I had friends.

Q Now, there is an entry underneath that:

"Thanks for the tickets."

A Yes, sir.

Q What does that refer to?

A I had given the major two tickets for Puerto Rico, all expenses paid, for he and his wife, and it was given to him through the Field Travel Agency.

Q When did you give it to him?

A Well, it must have been before June 15, 1971, because this telephone call gives a thanks for them.

Q Wasn't it that day you had sent it over to him?

A It could well be.

Q And you testified that he called you in reference to this and said, "Thanks for the tickets"?

A That's what it says here.

Q You also said you had a conversation with him that he couldn't use the tickets.

A After that.

Q Because his wife was sick?

A After that, not on this date, sir.

Q And what happened to the tickets?

A They were returned, sir.

Q As a matter of fact, didn't he call you and say thanks for the tickets but he couldn't accept them, and returned them?

A No, sir, absolutely not, because were were arranging for me to try to get there with my wife so that we could spend it together.

Q Did Major Sangemino ever ask you for tickets?

A No, sir. He did say, "I have never traveled. I wish I could travel the way you do."

Q And after these tickets, you sent them over for what day?

A I don't remember the date that was on the tickets, sir. I mean when they were for.

Q If he never asked you for it, how do you get tickets for him on a plane when you don't when he could go?

A He said he could go, sir.

Q You nust said you never spoke to him about these

tickets before you sent them over.

A That is not true. Before I sent those tickets, at one of the visits I made I told him I had just come back from a trip.

He said, "I wish I could travel the way you do. You certainly get around."

I said, "Would you like to make a trip? Have you ever been to Puerto Rico?"

He said, "I have never been anywhere."

I said, "I will see to it that you and your wife get to Puerto Rico."

He said, "That is lovely."

That is how it started.

Q Didn't you some time send him tickets for Las Vegas?

THE COURT: Finish with Exhibit 3-A and then you can get to Las Vegas. After you finish with 3-A we will take a short recess.

Q Do you have any records that would indicate you sent the tickets that morning?

A One more time, sir, I don't have a record in the world. I have been stripped totally clean.

Q The tickets, is it possible they were delivered that morning to him?

A It is possible.

Q And did you deliver them?

A No, sir.

Q Is it possible Mr. Mofschowitz delivered them?

A That's quite possible.

Q With reference to August 18, 1971 --

A August 18, 1971, yes.

Q -- who is Scott Pollowitz?

A He is one of the complainants against me in the grand larceny case.

Q Was he an Army case of yours?

A Both dental school and Army.

Q November 4th, 5h and 9th.

A November 4th, 5th and 9th.

Q What were those in reference to?

A "Major Sangemino. Please call him."

"Major Sangemino." Again the same telephone number that appears up above. So it is quite possible that is his telephone number. I don't know.

Q Didn't you ever call him?

A I would say to my secretary, "Get Major Sangemino, period.

Q So ever time you called him you would tell your secretary to get Major Sangemino?

* * *

Q You told him you would see him after January 1st. You were a little short of money?

A Uh huh.

Q At that time did you own a Masserati?

A No, sir, I never owned a Masserati.

THE COURT: Is the Masserati in this exhibit?

MR. BRETTSCHNEIDER: No, sir.

THE COURT: Don't stray from this exhibit. Finsih this exhibit and then you may cross-examine as to the Masserati. I told you that a number of times.

MR. BRETTSCHNEIDER: I have nothing further with this exhibit.

THE COURT: Collect the exhibits and then we will take a ten-minute recess.

The jury may withdraw from the courtroom.

(Jury leaves courtroom.)

MR. HARRIS: Your Honor, at this time I would like to hand up that transcript, and the Government would like to use it on redirect based on what has happened this morning.

THE COURT: I might have to check the transcript. It looks to me like he opened the door to it.

So you can examine it during the recess.

Don't you have more copies?

MR. HARRIS: I will make some, your Honor. I hadn't intended to use it. Now I think I have to.

THE COURT: You are not going to be using it before lunch, I am sure.

MR. HARRIS: Probably not. I will read it over and see that it is turned over.

(Recess.)

T5

(In the courtroom in the absence of the jury.)

THE COURT: All right, bring in the jury.

MR. BRETTSCHNEIDER: Before the jury comes in --

THE COURT: Do you want to be heard before the jury comes in?

MR. BRETTSCHNEIDER: Yes.

May I respectfully ask that I now have permission to refer back to the items in cross-examination which I did not do because it goes into other materials which incidentally goes back to those.

THE COURT: I really don't understand the nature of your request.

MR. BRETTSCHNEIDER: Well, one of my questions will concern a statement about him not having any money --

THE COURT: You see, I have not precluded you, Mr. Brettschneider, but the difficulty is this: A juror should not have things in his hand except when he is using them, and you handed these exhibits to the jurors, and that is all right with me, and then instead of examining him about the exhibit that the juror is holding in his hands, and finishing with it, you go flying off on tangents about a Maserati and this and that, and when I try to tell you once you pay no attention to me, and I have to tell you a third and fourth time.

slh2

MR. BRETTSCHNEIDER: Would that refer to --

THE COURT: Now, I didn't preclude you. You can ask him about the Maserati, whether he had money --

MR. BRETTSCHNEIDER: First, when I had asked him about the purchase of automobiles, it had reference to the idea of did he have any money --

THE COURT: It has nothing to do with the exhibit. I have not said you couldn't ask him about automobiles. You may ask him about his automobiles. Just keep asking him.

MR. HARRIS: Your Honor, for the record, the transcript has been marked 3598, and I want to give it to defense counsel to review.

THE COURT: And I want to ask you again, Mr. Lemler, please just try to answer questions; don't engage in arguments, because we would all like to proceed as rapidly as we can, and as soon as you are finished you will be off the stand and then some other witness will be put on the stand.

If you don't understand the question, you may say so. If you could answer it yes or no, try to do so; if you can't answer it yes or no, give him a concise answer. He is entitled to ask the questions.

All right.

* * *

Q So you were still trying to get him into a medical school?

A Yes, sir.

Q Now, there are no calls here with reference to any Dr. Teitelbaum or that you are going to any procedures in Selective Service to have him deferred?

A Dr. Teitelbaum played no part in this, sir.

Q What part would Major Sangemino play in keeping him out with respect to medical school?

A Well, the part that he played, as far as I know, sir, was to see that he wasn't inducted while applications were still alive, and he did that quite often with many people, sir.

T6

Q In what manner was he able to stay the drafting of these people?

A I think a telephone call to somebody such as Mrs. Dahl or some other of the women who worked at the various Selective Service centers.

Q But the induction notice or the stay of the induction notice is the Army at Fort Hamilton, isn't it?

A I don't know, sir.

Q You are inducted at Fort Hamilton, you are not inducted at the Selective Service station?

A That's right.

Q And this Mrs. Dahl worked where?

A At the Draft Board, Valley Stream Draft Board. I just offered her name as one of the samples, sir.

Q On March 18, 1971, "Lenore Resnick called, will bring a rejection letter at noon tomorrow."

A Yes?

Q Was that a rejection from Selective Service?

A No, sir, from another medical school.

Q What medical school was that?

A It doesn't say here, sir, does it?

MR. BRETTSCHNEIDER: May I ask that the witness--

A You're asking me something --

THE COURT: Do not argue with the attorney. Please

* * *

* * *

MR. HARRIS: I object.

THE COURT: Sustained.

Q Let us go to June 15, 1971.

A Yes.

Q "Mrs. Resnick called."

A Yes.

Q Do you know what she called about?

A Yes. At this time we were very, very close-- you're talking now about the middle of June, 1971 -- we were anticipating something to happen at the Mercy Hospital School of Medicine that we were anticipating.

Q When was the Mercy Hospital School of Medicine supposed to open?

A This school was supposed actually open for busine s September, 1972. If it had opened in 1972, all of our 1971 candidates would have been marked for acceptance and, therefore, I would have no Selective Service problem.

b2

Q Well, you had paid considerable money to --

THE COURT: Isn't this getting repetitious and aren't you straying from Exhibit 3B? If you want to ask him about the money he paid later on, I suppose I would permit it. But I have asked you before: you have the jury following this exhibit. Let us finish up.

Q July 13, 1971. What was that in reference to?

A The same thing, "What's happening."

Q To the draft or to her application for getting into medical school?

A I would say this is the medical school, sir.

Q What about the July 28th, was she making an appointment for the draft or for the medical school?

A "Would like" -- I think that's just an appointment to see her, sir, and I don't think it has any reference to either.

Q All right, sir.

What about August 3rd, "Mrs. Resnick-will call back."

A She was quite concerned, sir. Her concern was because of the Army situation.

Q You say that she was concerned because of the Army situation.

August 3rd. Now, again, "Mrs. Resnick for Edward." Did you tell your secretary you should know soon?

A Yes.

Q What should you know soon?

A Is this school going to get under way or not.

Q What efforts did you make to ascertain whether the school was going to get under way?

THE COURT: Go into the school later. Let us

continue with Exhibit 3B. You cannot have this flitting about. We will never get finished here. Let's go.

Q On August 23rd, "Mrs. Resnick-will bring newspaper clippings."

A Yes.

Q What was that about? Did she ever bring these clippings in?

A Yes.

Q What was it?

A I beg your pardon?

Q What were the clippings?

A We had the New York Daily News and several other newspapers had quite a writing about the lawsuit I brought against Downstate Medical School, sir, and the New Jersey College of Medicine.

Q "Mrs. Resnick again," on August 26th, "had to make an appointment. Very angry. Dr. L told her she would hear by Friday. If anything happens, contact her son in Boston College."

Did you send him up to Boston College?

A No, sir.

MR. HARRIS: I think it says "Boston collect."

THE COURT: It does seem to say "Boston collect."

MR. BRETTSCHNEIDER: Yes, it does. My apologies.

* * *

THE COURT: All right.

A Yes, sir.

Q Where did you see Major Sangemino on that date?

A Up in the grand jury room of this building, sir.

Q Did you have a conversation with him before you entered the grand jury?

A Yes, sir.

Q Did you ask him why he was there?

A Yes, sir.

Q Did you tell him, "Why are you here? What's this all about"?

A Yes, sir.

Q You already knew he was supposed to be there?

A Yes, sir.

Q So you lied to him at that time?

A Yes, sir.

Q Now, in this conversation, didn't you tell him that you were in a lot of trouble?

A Yes, sir.

Q Didn't you tell him you were facing a lot of trouble in Nassau County?

MR. HARRIS: Your Honor, if we are talking about the tape which is in evidencd, I would say the exhibit

speaks for itself.

THE COURT: I did not understand he was asking about the tape.

MR. BRETTSCHNEIDER: The conversation had prior to the time that the recording was later on made in the afternoon, I believe.

THE COURT: Did you have a conversation prior to the time on which the recording was made?

THE WITNESS: Just three or four words, sir. No conversation.

THE COURT: All right. What was the substance of the three or four words?

THE WITNESS: "What are you doing here?" and, "I guess I'm here for the same thing you are."

Q That is the sum and substance of your conversation at that time?

A Sum and substance, yes.

Q Do you recall in that conversation of the recorded one --

THE COURT: No questions about the recorded one. You can play the recording again, if you wish.

Q Did you mention Major Maher to him?

A No, sir, he mentioned it to me.

MR. HARRIS: Your Honor, I object. The tape

* * *

* * *

at a grand jury to begin with.

Q Didn't you tell him that they have cards, that may show something about Selective Service, from him?

A That was not said, sir, before a taping.

Q Didn't you tell him, "How am I going to explain these things to the grand jury"?

A Not before a taping, no, sir.

Q Didn't you tell him you have a lot of trouble because this would be your third time in jail where you got convicted?

A Absolutely not, sir. Absolutely not. You're not allowed to stay up there, sir, for that kind of conversation. It was just my walking out as he's walking in.

MR. BRETTSCHNEIDER: I have no further questions of this witness.

THE COURT: Mr. Harris? Do you have any redirect?

MR. HARRIS: Your Honor, the only redirect I have is in reference to that issue we took up at the side bar.

THE COURT: I will take it up further at the side bar.

(At the side bar.)

THE COURT: Where is the transcript?

MR. HARRIS: Mr. Brettschneider has it.

(Handing.)

THE COURT: What is it you propose to do?

MR. HARRIS: Your Honor, I would like to have the witness identify the tape, and I would like to play the tape to the jury.

THE COURT: What do you say to that?

MR. BRETTSCHNEIDER: I have never seen this yet, Judge.

THE COURT: You opened the door, you know. You demanded it in front of the jury. The only basis on which I would take it would be bearing on his truthfulness, that is all.

MR. HARRIS: As a prior consistent statement?

THE COURT: That is all. I would only take it --

MR. BRETTSCHNEIDER: I have never said there was not a tape, Judge, nor did I indicate anything else. I have not read it.

THE COURT: What you did in the jury's presence, really, was bordering on the foolhardy with respect to this tape. I do not understand why anybody would do it.

I think you ought to read it so that you will have an opportunity to state your objection, and I will

hear you at about twelve after two in the absence of the jury. I will have the jury come back at 2.30.

MR. BRETTSCHNEIDER: If the Court pleases --

THE COURT: It would have to come in with a limiting instruction, but you cannot protect your rights until you have had a chance to read it.

MR. BRETTSCHNEIDER: I have not seen it yet, Judge.

THE COURT: I will let you read it.

MR. BRETTSCHNEIDER: Judge, I would like at this time to offer into testimony --

THE COURT: You are not in a basis to offer testimony. He is proceeding with his direct. We have not come to the defendant's case. What are you going to offer if he has not rested?

MR. BRETTSCHNEIDER: This is the statement, the grand jury minutes of Leonora Resnick.

THE COURT: Absolutely not. When the defendant's case goes forward, You may make an offer at that time.

MR. HARRIS: I have offered to provide counsel --

THE COURT: How many years have you been practicing?

MR. BRETTSCHNEIDER: Many, Judge.

THE COURT: How many?

MR. BRETTSCHNEIDER: Over 20.

THE COURT: You have done criminal trials during that period?

MR. BRETTSCHNEIDER: That is right, sir.

If I can state my basis on the record, why we are doing it --

THE COURT: No. You cannot offer evidence until he finishes with this witness and rests.

(In open court.)

THE COURT: Members of the jury, we are going to break for lunch at this time and I ask you to return to the jury room at 2.30.

As soon as the jury has left, you may step down, but you have to be back at 2.30, also.

THE WITNESS: Sir, the records are here.

THE COURT: We will be in recess.

(Luncheon recess.)

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slh 1

AFTERNOON SESSION

2:25 P.M.

(In the courtroom in the absence of the jury.)

THE COURT: Did you have a chance to read that transcript?

MR. BRETTSCHNEIDER: I did very quickly.

THE COURT: What is it you want to do? I don't think we have to make a big thing out of this transcript.

MR. HARRIS: Your Honor, we would offer this as a prior consistent statement antedating the motive that Mr. Brettschneider has brought out on cross-examination, to curry favor with the government.

THE COURT: What lines in it are prior consistent statements as to this particular case?

MR. HARRIS: As to this particular case?

THE COURT: Yes.

MR. HARRIS: It basically corroborates the entire Petro transaction. For example --

THE COURT: Do you have an extra copy of it?

MR. HARRIS: Yes, I made copies during lunch.

Let me call the Court's attention to page 4 first, the large entry in the middle of the page:

"And how can I create the impression of your illness and then you have off gallivanting somewhere having

a good time? Now it is possible that you can be going under doctor's instructions, you see, and I will discuss this with Dr. Teitelbaum, because we're just not going to permit you to be hospitalized again."

Then I refer your Honor to page 6, the bottom, the second eptry from the bottom:

Lemler says: "Right. You see now, he's gonna start it there, except that we're not gonna waste the time that we did before with the local operation."

And there there is a "uh huh.

"L. We're gonna start it right in Washington, you see? So we'll save about two weeks. Now, if you're asking me how long Washington is gonna take, not too long, because on the kind of affidavits that we hope to submit, they're either going to react favorably right away, or they're not gonna react at all."

Just as he testified he did. He went to Washington.

THE COURT: What is the date of this?

MR. HARRIS: This is a tape recording made on the 18th of February, 1970.

Page 7, about two-thirds of the way down, Lemler says, "Now the fee is going to be a hell of a lot less than it was last time. My fee now is going to be $5,000."

Then on page 10, Mrs. Petro referring to the refund, the last entry on the bottom, and she speaks: "No, I don't want it. I didn't even want the 9,000."

Then your Honor there is one other entry which I can't put my hands on -- will you give me a moment?

THE COURT: Yes.

MR. HARRIS: In which Lemler says he is very anxious to have it succeed because he has put out a lot of money and the only one who lost money the last time around was him, meaning Lemler.

Here, I have found it, your Honor, page 8 --

THE COURT: It probably is a prior consistent statement.

Are there any other tapes or the like that you have with this witness that you intend to use?

MR. HARRIS: No, your Honor. I didn't intend to use this prior to today.

THE COURT: Do you want to be heard?

MR. BRETTSCHNEIDER: If the Court please, I think there is nothing inconsistent, or at least the witness had testified basically the same as he is testifying now. I don't think we have opened the door to any questions as a result of this --

THE COURT: The cross-examination suggested he

was lying about the Petro case. Isn't that a fair evaluation of the trend of the cross-examination, that it was a story he made up in order to gain favor with the government?

Now, that being so, the government is permitted under the rules of this circuit to show a prior consistent statement. I have to say that part of this statement is also inconsistent because he talks about a check in here.

MR. HARRIS: For the second payment, the $5,000 time.

THE COURT: And he told us on the stand he didn't have a check.

MR. HARRIS: He was talking about the 9,000 I think, your Honor.

THE COURT: My memory is he was asked if he had a check from Petro and Desicci.

MR. HARRIS: For the $9,000.

THE COURT: I thought it was for the 5,000.

MR. HARRIS: I can't argue that; I don't remember precisely.

MR. BRETTSCHNEIDER: In any event, there is also a question -- and I don't know whether the Court will permit us to go into it -- that he testifies on this statement that he is leaving the following morning for Washington. Now, of course, he testified he got another pass or a new

slh5

from Major Sangemino. Now is he received this at night--

THE COURT: You will be permitted to ask him that. This is not the pass from Major Sangemino that is in evidence here, that Resnick matter--

MR. BRETTSCHNEIDER: No, that has nothing to do with that. This is supposedly a similar type card which we haven't had, but this sort of indicates that that question on there -- well, Judge, before we start -- I'm sorry I gave the wrong impression with respect to the grand jury minutes. May we be heard on that so we can perhaps save some time next week?

THE COURT: Yes, certainly. What do you want to say?

MR. BRETTSCHNEIDER: Judge, I have in my possession the grand jury minutes of one Lenore Resnick, who is a named co-conspirator, and the testimony of Mrs. Resnick in this particular case in the grand jury hearing in this is completely different from the testimony that Mr. Lemler describes as to her conversationswith Mr. Lemler.

Now, I don't know who this woman is, I have never seen her --

THE COURT: I understand she is alive and well and living in Nassau County; is that correct?

MR. BRETTSCHNEIDER: I don't know Judge.

THE COURT: Why don't you take the weekend and see if you can't locate Mrs. Resnick.

MR. HARRIS: I offered to give him Mrs. Resnick's address this morning and he said he didn't want it.

MR. BRETTSCHNEIDER: Judge, I understand from the attorney that this woman will not come in to testify.

THE COURT: She will come in to testify. I will send a U.S. Marshal for her if you want her. If you want her in here to testify I will have her dragged in.

MR. BRETTSCHNEIDER: I should like it, Judge.

THE COURT: All right, issue a subpoena, and then if she doesn't honor it I will send a marshal.

MR. BRETTSCHNEIDER: May I have the address?

THE COURT: Now you told the man you didn't want the address. Don't play games with the U.S. Attorney. Take the address when he offers it to you.

b2 What is the address, Mr. Harris?

MR. HARRIS: Can I get it out of my file, your Honor?

THE COURT: All right.

I don't see how you can propose to offer an exhibit in the course of this witness' testimony which does not pertain to this witness.

MR. BRETTSCHNEIDER: Judge, at the side bar-- I'm sorry if I gave the wrong impression --

THE COURT: I want to start the trial. I don't like the jury sitting out there.

MR. BRETTSCHNEIDER: Judge, in the event that I am not able to locate her on this weekend -- I don't know where she is -- this is the first time --

THE COURT: When were you give a trial date here?

MR. BRETTSCHNEIDER: I never had the names or the addresses of these witnesses whatsoever, and it is not in the indictment; it is not in the testimony of the grand jury.

THE COURT: Hand him the address.

MR. HARRIS: Lenore Resnick --

THE COURT: I think her phone number is on some of these exhibits.

MR. BRETTSCHNEIDER: I quote, Judge. There was no answer to any of these people.

MR. HARRIS: 39 Margaret Avenue, Lawrence, New York.

THE COURT: Bring in the jury.

MR. HARRIS: Judge, might I just have a moment to bring out the tape recorder?

THE COURT: Yes, certainly. Please hurry.

MR. BRETTSCHNEIDER: Are we permitted to go over the prior inconsistent statements --

THE COURT: Wait until Mr. Harris returns and then I will discuss it with you. I am sure the answer is yes.

T2 pm

gws

THE COURT: I understand you propose to have him identify it and play the entire thing.

MR. HARRIS: Yes, your Honor.

THE COURT: So there is no problem, you may have recross examination as to anything that is brought out on redirect examination.

MR. BRETTSCHNEIDER: Thank you very much.

THE COURT: As soon as you are ready, let me know.

(Pause.)

MR. HARRIS: Okay, your Honor.

THE COURT: Bring in the jury.

(Jury present.)

N A T H A N L E M L E R , resumed.

THE COURT: Mr. Harris, you may have redirect examination.

MR. HARRIS: Thank you.

I request this be marked Government's Exhibit 14 for identification.

(Government's Exhibit 14 was marked for identification.)

xx MR. HARRIS: And this paper Government's Exhibit 15 for identification.

xx (Government's Exhibit 15 was marked for

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* * *

Q Did you ever get that back?

A No, sir.

MR. HARRIS: No further questions of this witness.

CROSS EXAMINATION

XX BY MR. BRETTSCHNEIDER:

Q Mr. Mofschowitz, June 15, 1971, do you recall delivering a package, a letter or an envelope to the major?

A Yes, sir.

Q Can you describe the size of that envelope?

A Well, it was one of those where -- it's about four inches and two inches across. Like a pay envelope.

2 Q How many times have you been to the Federal Building?

A Inside?

Q 26.

A Inside the building, sir?

Q Yes.

A Twice.

Q On the day of June 15, is it true, sir, the envelope you had contained tickets?

A Tickets?

Q Yes.

A No, sir.

Q When you went into the office of Dr. Lemler, did he call you into his office?

A Yes, sir.

Q And did he give you $300?

A He offered me cash, $300 in bills.

Q Did you count it?

A I saw three bills.

Q Were they hundred-dollar bills?

A Yes, sir.

Q Was the money out in the open at the time he gave it to you or at the time he offered it to you?

A Yes, three bills.

Q He offered it to you, that correct?

A Yes.

Q Then did you look at the money at that time?

A Yes, sir.

Q And then what happened after that?

A I told him I wouldn't accept money that way, he should put it in an envelope.

Q Do you recall testifying before the grand jury, referring to People's Exhibit 3586?

THE COURT: The question is does he recall appearing before the grand jury; that's the question.

Do you? Do you recall testifying before a

Federal grand jury?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Do you recall being asked this question and did you give this answer;

"Q And did he ask you to bring an envelope to the major?

"A Yes."

MR. HARRIS: Page?

MR. BRETTSCHNEIDER: EJC-4.

Q Were you asked that question and did you give that answer?

A What question, sir?

Q Were you asked the question:

"Q And did he ask you to bring an envelope to the major?"

A Yes, sir.

Q So the envelope was in his hand at this time, was it not?

A The first time or the second time?

Q The second time we are talking about.

A No, it was not.

Q Sir, were you asked this question and did you give this answer:

"Q On the second occasion did Lemler call you into his office?

"A Yes, sir."

A Yes.

Q Is this the time when we are referring to as the time that you saw the money?

A June 15, yes, sir, the second time.

Q That's the second time?

A Yes, sir.

Q Following were you asked the question:

"Q Did he ask you to bring an envelope to the major?

"A Yes."

THE COURT: We have been over that. He has already said he told the grand jury that.

Q Were you asked this question:

"Q What did you see?

"A I saw some bills tucked in an envelope."

THE COURT: No. "I saw some bills tucked in the envelope."

Q "In the envelope."

A The second time?

Q Yes.

A No, sir.

Q I show you --

(Document handed to witness by Mr. Brettschneider.)

Q Sir, does that refresh your recollection as to what transpired before the grand jury on the date of your testimony?

A Yes, sir.

Q Which of your answers is now the correct answer, sir?

A He offered me bills.

Q Yes?

A And I told him I won't accept the money unless he put it in an envelope.

Q You didn't tell that to the grand jury, did you?

A I don't remember now.

Q Let me show you this.

(Document handed to witness by Mr. Brettschneider.)

A Yes, sir.

Q Does that refresh your recollection, sir?

A It does.

Q Did you tell the grand jury that he offered you $300 and you told him to put it in an envelope?

A Did he tell me --

Q Did you tell that to the grand jury?

A I think it was about $300. It was $300.

Q Did you tell the grand jury that Dr. Lemler handed you $300 first or offered you $300 to take to Major Sangemino?

A Yes.

Q And that you refused to accept it?

A That's right.

Q And that you told him to put it into an envelope?

A Yes, sir.

Q And that you saw him put it into an envelope?

A Yes.

Q And you testified to all of those things?

A Yes, sir.

MR. BRETTSCHNEIDER: If the Court please, at this time I offer into evidence the grand jury minutes of Mr. Charles Mofschowitz dated May 2, 1974.

THE COURT: Is there an objection?

MR. HARRIS: Yes, there is.

THE COURT: I will take it at the side bar.

(At the side bar.)

MR. HARRIS: There is no basis for offering it. He has a live witness on the stand subject to cross-examination.

THE COURT: He wants to offer it to impeach his testimony. I don't see why he can't do that if he

wants to.

MR. BRETTSCHNEIDER: How am I going to prove he told the grand jury that? These are the minutes.

THE COURT: You want to offer it=

MR. BRETTSCHNEIDER: Yes.

THE COURT: I will overrule the objection.

(In open court.)

THE COURT: I will overrule the objection and Exhibit 3586 for identification will be received in evidence as Defendant's Exhibit F.

(Defendant's Exhibit F was received in evidence.)

xx MR. BRETTSCHNEIDER: Can we have a stipulation that this is a copy --

THE COURT: You don't have to have a stipulation. I have overruled the objection. It is in evidence. You can read all or part of it. If you don't read it all and the Government wants to read part of it, they may. It is an exhibit the same as every other exhibit in the case. You don't have to read it right now if you don't want to, but you may read it.

THE WITNESS: May I have a glass of water?

THE COURT: Certainly. I will ask the clerk to get you a glass of water.

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Q Reading from page 3 of the minutes of the grand jury testimony of Charles Mofschowitz dated 5/2/74, page 3--

THE COURT: You want to begin on page 3?

MR. BRETTSCHNEIDER: Yes.

THE COURT: All right.

Q "Q Now on the second occasion did Lemler call you into his office?

"A Yes, sir.

"Q And did he ask you to bring an envelope to the major?

"A Yes.

"Q And did you see the contents of the envelope?

"A Yes, this time I did.

"Q And what did you see?

"A I saw some bills tucked in an envelope.

"Q U.S. currency?

"A Yes.

"Q Currency?

"A Yes.

"Q Did Lemler tell you how much there was there?

"A I think it was about $300.

"Q What did you do with this envelope?

"A I went to the major and handed it to him.

"Q Did you hand it to him personally?

slh. Mofschowitz-cross

"A Yes, sir.

"Q And did you say anything when you --

"A Just a greeting, hello, I'm from Dr. Lemler's office.

"Q And was also at 26 Federal Plaza?

"A Yes, sir."

Now, sir --

THE COURT: Do you want any more read at this time?

MR. BRETTSCHNEIDER: No.

THE COURT: Mr. Harris?

MR. HARRIS: I want the whole exhibit read to the jury.

THE COURT: Well, wait until later.

MR. HARRIS: Yes.

THE COURT: Go ahead Mr. Brettschneider.

Q Now sir, do you recall an examination on April 3rd -- an interview on April 3, 1974, now referring to Government's Exhibit 3588 --

THE COURT: You see, you have no proper foundation. Ask him the underlying question first and then confront him with his prior inconsistent statement if there is one.

Q Now, sir, when you got to 26 Federal Plaza the second time what if anything did you do?

A I went up to the major's office.

Q Did you go by car?

A No, sir.

Q When you got to the office where did you go?

A Up to his office; I don't remember what room it was.

Q Do you know what floor you got off?

A No, sir, I don't remember.

Q Then what did you do?

A I asked to see the major. I was ushed into his office. The usual greeting, handed him the bills, shook hands -- I said, "I'm from Dr. Lemler's office," gave him the envelope, gave him the usual thing and just walked out.

Q Do you recall an examination on April 3rd or an interview on April 3, 1974, with Lieutenant Ehrens and Nathan Lemler being present?

A Yes, sir.

Q Had you spoken to Mr. Nathan Lemler prior to this examination?

A No, sir.

Q Was Mr. Nathan Lemler present at the time you were interrogated?

A Yes, sir.

MR.HARRIS: I object to the word "interrogated."

slh4 Mofschowitz-cross

THE COURT: Sustained.

Q Now, was the major pointed out to you?

THE COURT: When are we talking about?

Q On this time that you went up with the money.

A Was the major pointed out to me?

Q Yes.

A I went to his office.

Q Did you tell Lieutenant Ehrens on the date that you drove there you went upstairs, asked for the major, who was pointed out to you?

A I was asked -- if he was pointed out to me?

Q You asked for the major, Major Sangemino, who was pointed out to you?

A I don't recall whether you mean -- when was this? What day was this?

Q April 3, 1974.

A No, sir.

THE COURT: The question is --

THE WITNESS: I --

THE COURT: Wait just a moment.

The question is whether on April 3, 1974, you told Mr. Harris or Lieutenant Ehrens that you remembered going upstairs and asking for Major Sangemino who was pointed out to you, in June of 1971?

THE WITNESS: Yes.

BY MR. BRETTSCHNEIDER:

Q So that the major was pointed out to you?

A I went to his office when the clerk, the girl, the secretary, ushered me into his office and I gave him the envelope.

Q Now, sir, you have been a friend of Mr. Lemler's for a long time?

A Quite a while.

Q When you were out of work you went to him to get a job?

A I didn't go to him. We got to talking. We socialized.

Q What was he paying you for your services?

A He was paying four and a half dollars an hour.

Q For how long a period did you work for him?

A I worked on and off. I worked the last two weeks in December. Then from January on I worked on and off for him. He would call me at the house.

Q He would call you at your home?

A He would call me at my house; I would meet him either the airport or go over to his office.

Q Were you with Dr. Lemler the day of June 15th?

A June 15th?

Q Yes.

A 1971?

Q Yes.

A Yes, sir.

Q What time did you get to the office that day?

A That day I don't remember going to the office. I don't remember goingto the office. I may have got the money the night before -- the day before.

Q Now sir, you may have got the money the night before?

A The day before.

Q The day before?

A Yes, I may have, I'm not sure, because I may have left for my house over to 26 Federal Plaza -- I don't recall, it's so many years ago -- if I went to his office or not, I don't recall.

Q But you are sure there was money in an envelope?

A Yes, sir.

Q No question about that?

A Quite sure.

MR. BRETTSCHNEIDER: No further questions of this witness.

THE COURT: Any redirect examination?

MR. HARRIS: No further questions.

* * *

Q Mr. Harris?

A Yes.

Q And did Mr. Harris write down what you were saying?

A I imagine so.

Q Was he taking down the statements about what you had just said about what your father had told you when he came out of the building?

A Yes, there were things he wrote down. What he wrote I am not sure of but he did write things of what I said.

THE COURT: You mean he was making notes while he was talking with you?

THE WITNESS: Yes.

Q At that time did you tell Mr. Harris that you resided there with two sons aged 10 and 17 years?

A Yes.

Q That you had a sister Sybil and a brother Mark?

A My sister's name is Sidell.

Q Did you tell him that you resided with your mother until her marriage in 1953?

A Yes.

THE COURT: You know, you objected when the government wanted to ask all these things because they were so remote, and I agreed with you. Now I sustained your objection and told Mr. Harris to move along, and I would really like

s1h19 Tolli cross

you to come down to the things that affect this case.

Q Madam, I show you this document--

THE COURT: No. No basis. Ask another question.

Q Did you ever make any statement to him about what you said about your father saying to you --

A Make a statement to whom, Mr. Harris?

Q Yes.

A Yes.

Q About when did you make that statement to him in relation to other things you had given, other information?

A I don't remember.

Q Well, may I show you this document. Would that refresh your recollection as to when you may have said to him --

MR. HARRIS: I object.

THE COURT: That is permissible Mr. Harris.

MR. BRETTSCHNEIDER: Referring to 3580 (handing to court).

THE COURT: Is this with Mr. Harris, these notes, 3580?

MR. HARRIS: No, these are not my notes.

THE COURT: I sustain the objection.

Now you may show her 3579 if you wish.

Do you remember when you made the statement to

THE WITNESS: It was when I was called into his office last spring. If it wasn't March then it was April, but it was last spring.

Q Would that be April 10, 1974?

A It's possible.

Q I show you Government's Exhibit 3579 (handing).

THE COURT: Is there a question?

Q Does that reflect the entire testimony of Mr. Harris or the sum and substance?

MR. HARRIS: I object.

THE COURT: Sustained.

Q Is there any indication there of your statement that your father told you?

MR. HARRIS: I object.

THE COURT: Sustained. He could show it to her to ask if that refreshes her recollection as to this being the date when she told Mr. Harris. That question is perfectly permissible. It either refreshes her recollection or it doesn't.

Q Does that refresh your recollection as to what you said that time?

A I said a lot of things. I was there for a few hours, for a few days.

Q Did they take notes on any other day other than April 10, 1974?

A Yes.

Q And to whom did you speak to on those days?

A Mr. Harris.

Q And did Mr. Harris write down on a piece of paper what your conversations were on those other dates?

A Well, he was writing, but I can't say for sure just if he wrote every word I said or every statement I made. I couldn't see what he was writing, so I can't testify as to what he was writing.

Q Did you see him write what you said:

"My father said when he came out of there I gave him money in a crapper"?

A I couldn't say yes or no to that. I don't remember just what he wrote when I said what.

Q Does that appear in the statement before you?

MR. HARRIS: Objection.

THE COURT: Sustained.

You can show it to her only for purposes of refreshing her recollection. It is not written by her.

Q Did you write any statements to the U. S. Attorney?

A No, I did not.

Q Did you give any testimony with a recorder or stenographer present?

A No, I did not.

MR. BRETTSCHNEIDER: May I have the paper back?

Q At the beginning of 1972, you say the business closed?

A Yes.

Q Do you remember when it closed?

A If I remember correctly, it was around February; January or February.

Q And did your father give you a series of cards?

A No, he did not.

Q Did your father give you any documents relating to Remedial Services or his operations in Nassau County?

A No, he did not.

MR. BRETTSCHNEIDER: I have no further questions.

REDIRECT EXAMINATION

XX BY MR. HARRIS:

Q Did your father give you any records?

A No, he did ot.

Q Did he give you any checks?

A Yes, but not at that time. It was way before that he gave me an attache case with some canceled checks and check stubs from the year '67 or '68, mostly personal checks.

Q While you were working in the office as secretary, did you ever see any white index cards listing one case on a card?

* * *

* * *

THE COURT: I will look at it. Mark it for identification.

xx (Defendant's Exhibit H marked for identification.)

THE COURT: Approach the side bar.

(At side bar.)

THE COURT: Give me a statement of the purpose of the exhibit.

MR. BRETTSCHNEIDER: The purpose of this exhibit is to show that when a call came into the local board concerning any person, that the local draft board wrote that document and put it in the file and it becomes part of the file.

THE COURT: Didn't this witness already tell us that?

MR. BRETTSCHNEIDER: No. They have a right to see it because they are going to testify about it later on. It is a document kept in the ordinary course of business.

MR. HARRIS: It is irrelevant.

THE COURT: Do I understand the witness maintains they do not keep such a form?

MR. BRETTSCHNEIDER: He didn't know whether they did. I want to show them this is kept and used. Let the jury at least see one of them.

MR. HARRIS: He didn't testify he didn't know. He

said on all occasions he didn't believe there was such a form filled out.

MR. BRETTSCHNEIDER: He says these forms were filled out. It is a business record.

MR. HARRIS: That doesn't establish on what occasion one was filled out.

THE COURT: If they had a custom and a practice to keep such record, that fact may be brought out. It isn't necessary to take the paper in evidence to show that.

(In open court.)

BY MR. BRETTSCHNEIDER:

Q Sir, isn't it true that as a matter of practice in the Selective Service, that when these calls would come in, whoever was calling, they would put these SS-119's in?

MR. HARRIS: I object on form, "these calls." What calls?

THE COURT: The form is bad but this witness may be asked how, why and under what circumstances was an employee of a local board required to fill out a Form 119. Would you frame a question along that line.

Q Sir, would you tell us under what circumstances you would fill out a Form 119?

THE COURT: Not; a local board.

Q A local board. And when they would put that in the

file to become part of the file.

A A 119 would be made if the information received verbally or by phone about a registrant was pertinent to the processing of his case, i.e., if someone from state headquaters called and directed or recommended a course of action which would affect his case, it would be made up on a 119 and be put in the file.

THE COURT: What other headquarters, if any, besides the local board's headquarters used the Form 119 in 1969 through '71?

THE WITNESS: All Selective Service agencies would use this form, sir.

THE COURT: Including your own office?

THE WITNESS: Yes, sir.

Q Now, sir, would you please examine that file. I direct your attention to February 3, 1972.

MR. HARRIS: Your Honor, I object.

THE COURT: I will have to take your objection at the side bar.

(At side bar.)

MR. HARRIS: I would like an offer of proof as to where we are going with this Crisona file. He is using it to impeach a witness who hasn't testified to anything inconsistent.

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THE COURT: I will take your offer of proof.

MR. BRETTSCHNEIDER: I am going to show there is another SS-119 solely for the purpose to show this is a procedure every time someone called, the same thing on another date.

THE COURT: I will sustain the objection.

(In open court.)

THE COURT: The objection is sustained.

MR. BRETTSCHNEIDER: May I have this marked for identification?

THE COURT: Mark i.

xx (Defendant's Exhibit I marked for identification.)

Q Sir, is that a Selective Service file of one of your areas?

A Yes, it is.

Q And is that kept in the regular course of business?

A Yes, it is.

Q And in the regular course of business is it the duty of the Selective Service board to make such a record and keep such a file?

A That's correct.

Q I direct your attention in that file to July 27, 1970.

MR. HARRIS: Your Honor, the same objection I just

made.

THE COURT: Will counsel approach the side bar, please.

(At side bar.)

THE COURT: The difficulty I have with this is as far as I recall the government has proved no wrongdoing with respect to either Crisona or Wuerz. Am I correct in that?

MR. BRETTSCHNEIDER: That is correct.

THE COURT: If you want to open the door as to Wuerz and Crisona, the next thing they are going to try to do is to come forward and make some showing through Lemler and otherwise that Wuerz and Crisona were the beneficiaries of activities of Lemler and whoever else was involved with Lemler. So I see no purpose. If you make me an offer of proof, I will take it.

MR. BRETTSCHNEIDER: There is a letter in the file which is a record kept in the ordinary course of business from the Spanish Embassy concerning acceptance into the University of Barcelona anybody who appears and has been accepted. There has been testimony by Dr. Lemler there is no such animal. He has one in that file. That is the reason I am offering that.

MR. HARRIS: I object to it.

THE COURT: It would be hearsay, wouldn't it? Let me see the letter.

MR. BRETTSCHNEIDER: He has it. It's in the file, Judge. I don't have a copy.

THE COURT: The difficulty I have with this is that the letter was available to you at all times for purpose of cross-examination of Lemler.

MR. BRETTSCHNEIDER: I asked him.

THE COURT: There was nothing to prevent you asking Mr. Lemler whether such letters were given by the Culture Relations Office of the Embassy of Spain, and if he denied that they gave such letters, you could have confronted him with it.

MR. BRETTSCHNEIDER: It is a record kept in the ordinary course --

THE COURT: I don't care about that. I will sustain the objection.

You had better mark it for identification so your record will be complete.

(Defendant's Exhibit J marked for identification.)

MR. BRETTSCHNEIDER: Whatever has been going in here is a public record.

THE COURT: It has to be relevant.

MR. BRETTSCHNEIDER: It is relevant to what has

been going in.

THE COURT: It is not relevant to wrongdoing of Wuerz. You have had it in your possession.

MR. BRETTSCHNEIDER: I never had it in my possession. It has been in the possession of the government.

THE COURT: You didn't know about this letter?

MR. BRETTSCHNEIDER: I knew about this letter, but that's all.

THE COURT: You knew about it from the beginning of the case?

MR. BRETTSCHNEIDER: That's right. This is a document in a file which is kept in the ordinary course of business.

THE COURT: I don't care about that. That is not enough to make it admissible.

(In open court.)

MR. BRETTSCHNEIDER: May I have an exception, your Honor?

THE COURT: Certainly. You may have a running exception.

BY MR. BRETTSCHNEIDER:

Q Major, are you familiar with 2-S deferments?

A Yes, sir.

Q Assuming that a young man came to your office or someone came to your office and indicated that they were

* * *

CROSS EXAMINATION

BY MR. BRETTSCHNEIDER:

Q Mr. Petro, did you ever have any conversations with Major Sangemino?

A None other than handed him the envelope. He said thank you, and that was it.

Q You don't know what was in the envelope?

A No, sir.

Q At any time did you agree to do anything improper or illegal with Mr. Sangemino?

A No, sir.

Q And you don't know if Mr. Major Sangemino did anything with respect to you, is that correct?

A No, sir.

MR. BRETTSCHNEIDER: No further questions.

REDIRECT EXAMINATION

XX

BY MR. HARRIS:

Q Well, did you have a discussion with Nathan Lemler regarding, after your trips to Washington, about what steps would be taken in your case?

MR. BRETTSCHNEIDER: I object to this.

THE COURT: Overruled. I will take it subject to connection.

THE WITNESS: Will you say it again please, the

question?

Q After your trips to Washington did you have a discussion with Lemler about what steps he would attempt to try to favorably resolve your case?

A The only steps he said, "We will try one more thing, we will try to work through Major Sangemino's office, file some papers."

MR. HARRIS: No further questions.

THE COURT: Anything else?

MR. BRETTSCHNEIDER: Nothing further.

THE COURT: All right, you may step down.

THE WITNESS: Thank you, sir.

(Witness excused.)

MR. HARRIS: The Government calls Carol Bonowsky.

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* * *

that there is no foundation laid for their introduction or connection with the defendant.

I respectfully refer to the driver's license from the State of -- the driver's license of the State of New York, the card, Government's Exhibit 4, since there is no showing where it came from, whether it was ever used, or any facts or circumstances surrounding the use of that card; not is there any evidence on this trial to indicate anything about the use of the card.

THE COURT: Did you cover them all?

MR. BRETTSCHNEIDER: Yes.

THE COURT: I have sent for the transcript of last week's proceedings, which doesn't happen to be right here on the bench at the moment.

Would you like to respond, Mr. Harris?

MR. HARRIS: Your Honor, first of all, these are already in evidence. They were not received subject to connection. Specifically, Government's Exhibit 4, Sangemino's business card, was received without objection.

As to the others, your Honor, the Government claims that the driver's license applications are circumstantial evidence which reflect on Falcoff's Selective Service responses to the illnesses he has and the fact that he got out on epilepsy after passing a prior examin-

ation in which he said he didn't have epilepsy, and that circumstantially the jury could find that there was something wrong with this case. The man said he never had epilepsy, and three months later is rejected from the Service for having it.

THE COURT: Falkoff is the one who was examined by another board, is that true?

MR. HARRIS: He was examined in Lexington, Kentucky and then again at Fort Hamilton.

THE COURT: So as to his medical history, the driver's license is merely cumulative, the Kentucky license; that is what it is, isn't it?

MR. HARRIS: No, it is not.

THE COURT: Can I see the license?

MR. HARRIS: It is North Carolina, your Honor, and the importance of that license is the fact that that is the license which was issued after the physical, one license prior, one after; so we have his statements about his health bracketing the physical both before and after, so there can't be any claim of intervention of some condition. That is the North Carolina one.

THE COURT: You see, as far as Falcoff is con- concerned, if the Court's memory is correct, you have an Army Force's physical in evidence that he had taken in --

where was it again?

MR. HARRIS: Lexington, Kentucky.

THE COURT: And as to that he made a statement that there was no epilepsy, and the examining physician found nothing wrong with him.

MR. HARRIS: That is correct.

THE COURT: So that this driver's license is simply cumulative as to plenty of evidence that you have in the case, and it would seem to me it is entitled to extremely little weight. There is a very good motivation to lie to the Motor Vehicle Department to get a driver's license if a person has had epilepsy, but I do agree with you that it is admissible. I think there is very little weight to be attached to it; it is a certified record of the State, as I understand it, and here they have stipulated in lieu of certification; when it was received there was no objection to its authenticity.

The New York license which you have -- would you hand that up, please?

(Document handed to Court.)

THE COURT: It is admissible for another purpose. It shows that the man's residence was not within the five boroughs of New York. I thought, really, that that is what it was coming in for.

MR. HARRIS: It was coming in for both purposes, your Honor.

THE COURT: Do you want to be heard further as to these?

MR. BRETTSCHNEIDER: Judge, with respect to these there is no question in this present instance as to what the jury can determine or from what? Are they supposed to speculate that this is correct and that the finding of the board is incorrect?

THE COURT: If they believe Lemler they can draw an inference that the entire medical statement concerning epilepsy affecting Falcoff was a fraud and a sham, and if they believe Lemler they can so conclude. If they don't so conclude, then without believing Lemler these other exhibits would not prove very much. But the obverse isn't necessarily so. To a limited extent at least these documents corroborate Lemler or corroborates Lemler's testimony to the effect that it was a sham, and certainly Exhibit 7 shows that the man was arrested in the County of Nassau. So he had no business having any relationships with this defendant at all according to the Government's theory of the case.

Do you want to withdraw No. 7-A?

MR. HARRIS: Do I want to withdraw it?

THE COURT: Yes.

MR. HARRIS: No, your Honor.

THE COURT: I will deny the motion to strike No. 7 and I will give further consideration to the matter of 7-A. I will take that up later.

MR. HARRIS: Your Honor, as to Exhibit 4, I have located the page in the transcript, 116:

"MR. HARRIS: At this time I offer Government's Exhibit 4 into evidence.

"MR. BRETTSCHNEIDER: No objection."

THE COURT: Lemler testified he received the business card with the message written on the back of it by the major which he was to give young Resnick. The only puzzling thing about the card is that the record doesn't show us where the card went after the major allegedly gave it to Lemler. It indicates that Lemler gave the card to to the boy, as I understand it, and he took it with him to the examining station at Fort Hamilton.

MR. HARRIS: That's correct.

THE COURT: At least presumably he did. How it winds up on the counsel table the Assistant United States Attorney has not shown here, but that certainly doesn't affect its admissibility.

Nor is there any showing that the writing is

that of the defendant except the testimony of Lemler.

I will deny the motion as to the card.

What is the number of the card? 4?

MR. HARRIS: Government's Exhibit 4.

MR. BRETTSCHNEIDER: If the Court please, at this time the defendant addresses himself to the indictment and respectfully moves to dismiss the indictment on grounds that the Government failed to establish a prima facie case on credible evidence as to each of the acts alleged in the indictment.

Particularly with respect to the conspiracy count I submit that there has been no evidence in this trial except the testimony of Dr. Lemler who is greatly suspect at this time --

THE COURT: He may be greatly suspect. However, the credibility to be attached to Lemler's testimony is not a factor in this particular type of motion. If the jury believes him, if a reasonable person could believe him, then the Court under the Taylor case would not dismiss.

You may continue.

MR. BRETTSCHNEIDER: If the Court pleases, with respect to Count 2 I respectfully submit --

THE COURT: Let us stick with Count 1 of

75 Cr. 127 for a moment. I think there is no evidence here from which the jurors could conclude that certain of those persons therein named were co-conspirators. I think perhaps I ought to address myself to them and I am prepared to make a ruling that as to others there is independent evidence of their wilful and knowing participation in the conspiracy and also evidence of the existence of the conspiracy, from which, at least by a preponderance of the credible evidence, the Court finds it proper to permit the jury to consider the hearsay statements in furtherance of the conspiracy made by those persons. But I find no evidence here to show that Marilyn Blicksilver or Wuertz or Paley or Whelan are shown to be members of the conspiracy.

MR. HARRIS: The government doesn't quarrel with your Honor.

THE COURT: I think I would have to tell the jury that at the proper time. As to the rest, I think there is prima facie evidence as to the existence of the conspiracy and their participation in it wholly independent of hearsay evidence and sufficient to permit the extrajudicial statemens of those persons who are shown to be conspirators, being all that are listed in paragraph 1 of count 1 of 75Cr127 except for Wuerz, Paley, Whelam and Blicksilver.

MR.HARRIS: Your Honor, the government doesn't believe we have offered any such statements.

THE COURT: He has mentioned their names. There have been statements which Lemler says he made.

MR. HARRIS: Lemler is a co-conspirator.

THE COURT: I think so.

All right, you may continue.

MR. BRETTSCHNEIDER: I now address myself with respect to count 2.

THE COURT: Count 1 of 74 Cr. 928 is dismissed without prejudice on consent of the government, is that correct?

MR. HARRIS: That is correct.

MR. BRETTSCHNEIDER: If the Court please, I respectfully move to dismiss count 2 of the indictment on the ground that the government has failed to prove a prima facie case with respect to the defendant that he did receive or agreed to receive things of value for being influenced in the performance of his official acts; being influenced to commit and aid in committing and to collude in, and allow, a fraud, and make opportunity for the commission of a fraud, on the United States Government; and being induced to do and omit to do certain acts in violation of his official duties.

There is no testimony as to what this defendant did, if anything, and, as indicated by the witness here, the sole thing is "I don't know what he did. He waved his magic wand."

I submit that is not sufficient under the second count of the indictment to sustain the indictment at this time.

THE COURT: I think it goes further than that. There is testimony by Lemler, if believed, to the effect that he suggested a procedure to be followed to develop a claim in one or more of these cases and there is his own grand jury testimony which shows what his capacity was and, of course, you have that card which has been of concern

gwh3

to the court since the beginning of this trial. I think without the card the position might be somewhat different.

I would like to ask you how much of a variance you have between the amount of approximately $30,000 which is pleaded and the amount which was shown on the trial record?

MR. HARRIS: He testified to $30,000 on the trial record. I specifically asked him.

THE COURT: How much of that do they have to find in order to convict under count 2?

MR. HARRIS: Your Honor, they have to find any amount.

THE COURT: I don't know whether you wouldn't have a variance unless it was a substantial amount.

MR. HARRIS: The essence of this crime is accepting money and the amount -- this is not a case where you need $100 to raise it from a misdemeanor to a felony. It is accepting money or anything of value.

THE COURT: I guess he did say he gave him $30,000.

MR. HARRIS: That is exactly what he said, your Honor.

Also, your Honor, I would like to point out that in the line of cases in the Second Circuit the one that comes most readily to mind is the Manton case.

THE COURT: Everybody wants to cite the Manton case.

gwh4

MR. HARRIS: Judge Manton's argument was he took money but he decided that case the way he would have, anyway.

THE COURT: The court said that makes no difference whatsoever. We are not arguing that.

MR. HARRIS: I thought we were in terms of Mr. Brettschneider's argument.

THE COURT: I will deny the motion as to count 2.

MR. BRETTSCHNEIDER: I renew the motion with respect to count 3 and I submit that under the count of perjury the government must prove more than an oath against an oath.

THE COURT: This is not a perjury charge. Despite the fact the U.S. Attorney told him in front of the grand jury he might be charged with perjury, this is merely a Section 1623, Title 18, charge. The Court will so instruct. I don't have readily at hand that statute. If I can take a moment, I will send for the statute for you.

MR. HARRIS: I have it, your Honor.

THE COURT: Hand it to the clerk. This is an Alice in Wonderland statute, but if you don't like it you will have to address yourself to Congress. This statute is entitled "False declarations before grand jury or court," and it's an entirely different crime than the crime of perjury which is in Section 1621 of Title 18, and Congress

so recognized that fact when they passed it, and Congress specifically provides in subparagraph (e) of Section 1623 that it shall not be necessary that proof beyond a reasonable doubt be made by any particular number of witnesses.

So the old two-witness rule is gone as to this particular statute.

b2

The Court understands that this came from the fertile brow of John B. Deane III, but that may be hearsay.

All right, I will deny that aspect of your motion.

It occurs to me there is part of count 3 that ought to be -- well, perhaps not. He is not claiming it was false when he said: "Did you ever have dealings with Dr. Nathan Lemler?" And he said "Yes."

MR. HARRIS: Of course we don't claim that is false. The next question, in order to be understood, has to include the prior question.

THE COURT: I suppose that is so.

MR. HARRIS: We specified in our bill of particulars, your Honor, exactly which of the questions we didn't claim to be false.

MR. BRETTSCHNEIDER: May I address myself to the entire indictment?

(Discussion off the record.)

THE COURT: Back on the record, please.

gwh6

We received another telephone call from Mrs. Lenore Resnick in chambers. The gist of that call is that a neighbor has offered to drive her here to testify and her problem is primarily one of transportation and that he does not want to be required to sit and wait, as she has submitted to breast surgery of a non-radical nature.

The impression created by the call is that she would be willing to come if her transportation could be arranged and if she would not have to wait around.

The Court would be willing to interrupt any witness to put her on and let her go home, if it is a question of her convenience or her medical situation.

Both of her telephone calls to chambers have been described to me by my staff as being non-hysterical, even spoken and courteous on her part. She hasn't shown any obvious signs of mental difficulty of any kind in this area.

My suggestion would be at the noontime recess you, Mr. Brettschneider, since you are the one who wants to elicit her testimony, telephone her and attempt to meet her partway by assisting her with respect to her neighbor bringing her here, possibly a place for her to park can be found in one of the lots here in this neighborhood, and if you want to bring her in and put on the stand at her convenience and excuse her, I will permit any testimony which is being taken

to be interrupted to allow Mrs. Lenore Resnick to testify. Also, if she feels she needs a recess, the Court will make whatever arrangements are necessary in that regard.

So I suggest you go at that problem during the luncheon recess.

MR. BRETTSCHNEIDER: Fine.

THE COURT: Is there something further?

MR. BRETTSCHNEIDER: I address myself to the entire indictment. I move to dismiss on the ground that the testimony as elicited and the information given in this trial is so broad and so wide and so uncertain with respect to time, date and location that it is impossible for anybody to adequately defend himself on charges of this nature. The dates given from '69 to '70, from '70 to '71 vary in such a degree that no one could possibly defend or establish his innocence by showing he was not there except for the one date that was indicated on the trial, July 7, 1969.

I submit that on the entire testimony here it is impossible for a defendant to adequately represent himself based on the testimony here and the lack of specificness of the acts alleged going back to 1969.

Certainly the question as to whether these acts are separate or they are part of a conspiracy with respect

to the statute of limitations, whether each count or each act is a separate act, I submit that there is no way, in the interest of fairness, that a defendant could answer these charges in the manner in which they have been presented in this court.

THE COURT: Some of that goes to the weight, but there is some documentation as to certain matters, particularly those hospital records document the presence in the hospital of Zweibel and Petro, and while there may be other records which are available which would help specify the time, my inclination is to think that if they did they might tend to corroborate and are equally available to both of you.

So I will deny the motion on that basis. The only basis I would have for dismissing would be to make a finding contemplated by our recent Second Circuit case and also by Rule 29 to make the formal finding that on this record there is no evidence upon which a reasonable minded juror might fairly conclude guilt beyond a reasonable doubt, and I don't think that's the posture of this record. So I will deny that motion.

THE COURT: Anything further at this time?

MR. BRETTSCHNEIDER: Nothing further.

THE COURT: I have to break for luncheon recess at about 12:30. If you want to break early, I can.

* * *

EXCERPTS OF TRANSCRIPT OF TESTIMONY DATED APRIL 15, 1975 * * *

A I am sorry to keep repeating but I just can't, I have had too much, I don't remember. If I called him it was because I was worried, when is he getting him into medical school, if I called him at all. That I know I did many times.

THE COURT: Did you ever call him about Edward's job status?

THE WITNESS: Probably to tell him what was happening and when was he going to get him into medical school, Judge. That goes through my mind constantly, but everything else seems to be such a -- it's all blanked out.

MR. HARRIS: No further questions.

MR. BRETTSCHNEIDER: No further questions of this witness.

THE COURT: You are excused, Mrs. Resnick.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Next witness.

MR. BRETTSCHNEIDER: The defense calls Evelyn Cohen.

EVELYN COHEN, called as a witness on behalf of defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRETTSCHNEIDER:

Q Mrs. Cohen, where do you live?

A Brooklyn.

Q Where are you employed?

A Right now, U.S. Attorney's office, Eastern District.

Q What is your job there?

A Secretary.

Q Do you know the defendant Major William Sangemino?

A Yes.

Q How do you know him?

A I worked for Major Sangemino for a year and a half.

Q Can you give us the dates on which you worked for Major Sangemino?

A The end of October, 1969, through May 30th or 31st of 1971.

Q Were you a secretary?

A Yes.

Q Where were you located with reference to Major Sangemino's office?

A Right outside his office.

Q Which building was this in?

A 26 Federal Plaza.

Q On what floor were you located?

A We started on the 39th floor; then we moved down to the 23rd floor.

Q Now, do you know Dr. Nathan Lemler?

A Yes, I met him a couple of times.

Q How many times did you meet him during the year or year and a half that you were associated with Major Sangemino?

A About three or four times.he must have come up to the office.

Q Did Dr. Lemler come to the office of Major Sangemino on a regular basis of two or three times every month?

A No. I worked for him a year and a half and I saw him maybe three or four times.

Q Did he come up at regular intervals, twice a month or three times a month?

A No.

Q Now during that period of time did you ever see Dr. Lemler go into the office to Major Sangemino?

A Yes.

Q And at any time was the office door closed while they were in there?

A No.

Q Now, your desk was outside his office, was it not?

A Yes.

Q And you could look into his office, could you not?

A Yes.

Q Did you ever see Dr. Lemler give Major Sangemino any money?

b2 A No.

Q You will have to speak up, Mrs. Cohen.

A I said no, I'm sorry.

THE COURT: Did you all hear the last answer?

JURORS: Yes.

Q Now, did you ever receive an alligator bag with a hundred dollar bill in it from Dr. Lemler?

A Absolutely not.

Q Did Dr. Lemler ever call you or did Dr. Lemler ever call for Major Sangemino and you took the message?

A Yes.

Q Did he ever ask you any questions concerning the draft?

A Yes.

Q And did you give him the information that he requested?

A Absolutely.

Q And did he call quite frequently?

A Yes.

Q And would that be about draft notices?

A The lottery -- at that time the lottery sequence

numbers had just come into effect, and he would call up and say the boy's birthday is such and such a date, what is his lottery number? This was a question that the public was calling on. It was something new.

Q Now, how long do you know Major Sangemino other than the time you worked for him?

A That is when I met him.

Q Did you know other people that knew him?

A The people who worked in the office longer than I did.

Q Did you ever --

MR. HARRIS: Your Honor, I am going to object. I would like to approach the side bar.

THE COURT: All right.

(At the side bar.)

MR. HARRIS: Your Honor, I assume we are now getting into a foundation for reputation testimony?

THE COURT: I would assume so.

MR. HARRIS: Under the case of Michaelson, which is the Supreme Court case dealing in this area, a foundation which establishes only a community of the employment community was held to be a clearly insufficient basis to ask the underlying question, and before we get to it I would like to object now.

THE COURT: I believe you can take it if she knew him at all outside the employment community.

MR. HARRIS: So far she has said she only knew him at the office.

THE COURT: Well, I assume they probably knew each other outside also.

I will let him develop it.

(End of side bar discussion.)

BY MR. BRETTSCHNEIDER:

Q Mrs. Cohen, do you know other people that know Major Sangemino outside of the office where you worked?

A No.

Q Do you know other people in the building where you worked with Major Sangemino?

A No.

Q Did you ever discuss his reputation in and around the building with other people?

A Well, the people that I worked with, you know, the girls I went to lunch with.

Q And those are the people whowere employed in 26 Federal Plaza?

A Yes.

Q What was his reputation for honesty and morality and integrity?

MR. HARRIS: Objection. Objection.

THE COURT: Sustained.

MR. BRETTSCHNEIDER: I have no further questions of this witness.

THE COURT: Is there any cross-examination?

MR. HARRIS: Yes.

CROSS EXAMINATION

BY MR. HARRIS:

Q Mrs. Cohen, what time did you report to work when you worked for Major Sangemino?

A First the hours were 8:30; then they were changed to 8 o'clock.

Q Did you take a coffee break?

A In the morning at 10 o'clock.

Q What time was that, 10 o'clock?

A About 10.

Q Until?

A I usually had it at the desk. 10:15.

Q How long was the coffee break?

A To 10:15.

Q What time did you go to lunch?

A I went from a quarter after 12 to 1.

Q So during this lunch period you were away from your desk, is that right?

* * *

* * *

doctor, they have a questionnaire, report of medical history.

THE COURT: So you don't need Major Sangemino's card to go in and tell them you had epilepsy, do you?

THE WITNESS: No, sir.

MR. HARRIS: Nothing further.

THE COURT: You are excused.

(Witness excused.)

THE COURT: We will take a short recess, members of the jury. Don't discuss the case.

(Recess.)

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T5 (In the courtroom in the absence of the jury.)

MR. BRETTSCHNEIDER: Your Honor, before the jury comes in, I object to your Honor's actions in grabbing the papers --

THE COURT: Which paper did I grab, Mr. Brett-schneider?

MR. BRETTSCHNEIDER: The paper with respect to the last witness.

THE COURT: Which paper was that?

MR. BRETTSCHNEIDER: And your indication of displeasure -- that would be the statement Mr. Harris had.

MR. HARRIS: 23 for identification.

THE COURT: All right, I don't think I grabbed it. I asked for it, and the record will show that I asked for it. I have a right to see it. It disappoints me when a witness is confronted with the thing and reads it and then gives the type of answer the witness gave. I wanted to see this paper and get along with it. We have been too long on this trial, and I think it was perfectly proper for me to take the paper and do precisely what I did.

Bring in the jury.

MR. BRETTSCHNEIDER: Judge--

THE COURT: Bring in the jury. No more from you. Bring in the jury.

MR. BRETTSCHNEIDER: Judge, I have a--

THE COURT: Do you have a motion for a mistrial? If you do, make it.

MR. BRETTSCHNEIDER: No, Judge, I have a question here on a document I want to offer in evidence and the witness is not here.

THE COURT: All right, what is the question?

I understand you had two defense witnesses sitting in this courtroom all morning.

MR. BRETTSCHNEIDER: I didn't know that they were there. I didn't see them coming in.

THE COURT: At the beginning of this trial it was agreed that witnesses would not be in the courtroom while testimony was being given. That's a normal direction in this courthouse made on the record in almost every case I have ever tried or seen tried.

MR. BRETTSCHNEIDER: They have no reference to the case at all other than the character --

THE COURT: You must know who they are. You must know they are witnesses.

MR. BRETTSCHNEIDER: No, they came over to me later and said theywere in the court; they didn't know that they had to be outside.

MR. HARRIS: I would like to know who they are.

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THE COURT: I think the record ought to show who the two female witnesses were.

MR. BRETTSCHNEIDER: Demetria Garanfis and Susannah Gross.

THE COURT: And you didn't know they were here?

MR. BRETTSCHNEIDER: No, Judge, I didn't see them here until I talked to them outside.

MR. HARRIS: Your Honor, if that is one of the women who I think was sitting in the back, she has been here since the first day of the trial.

THE COURT: Well, you will see her eventually.

I am sure I gave a direction to both sides with respect to exclusion.

Now, what about this paper? Let's move along.

MR. BRETTSCHNEIDER: Your Honor, there was testimony of one Richard Falcoff before the grand jury on June 24, 1974. We have been trying to locate Mr. Falcoff. The address which we have or which he gave in the grand jury was 1421 Candlelight Court, Peoria, Illinois.

The information we have received is that he is no longer at that address and left no forwarding address. He was employed by a firm called Remnant House in Peoria, Illinois. We called that office, and they indicated he was no longer employed by them and they would not give the date

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of termination of employment, but he left no forwarding address. We have no way of knowing where this person is or whether that's the Richard Falcoff who --

THE COURT: Does the government know where the man is?

MR. HARRIS: No, the government doesn't, but the government also turned over grand jury testimony of young Falcoff's father.

THE COURT: Why don't you subpoena him and ask him and ask him where the kid is.

MR. BRETTSCHNEIDER: Judge, we can't find the father either. The father doesn't live here in New York; he is completely gone. Any of the records which were given to me reflect no address. The only address we have gotten is the one we were trying to locate where the son said he was living. The father said he just retired and left. I have no way of knowing where he is. I cannot search the entire country for the father, and I would indicate that I would like to put that testimony into evidence also.

MR. HARRIS: Your Honor, I think it is important for me to state for the record that until just now I have never been asked for the address of Richard Falcoff or his father, or informed that the defense was looking for them.

THE COURT: Mr. Brettschneider has not claimed

otherwise.

MR. HARRIS: I think it is important that the record be crystal clear on that.

THE COURT: Is Mr. Falcoff named in the indictment?

MR. HARRIS: Yes, he is.

THE COURT: Well, you knew about Falcoff since time in 1974.

MR. BRETTSCHNEIDER: No, Judge. The only thing we knew about was the name.

THE COURT: Well you had plenty of time to ask the government where is Falcoff.

Now all right, where is he, Mr. Harris?

Will you give whatever address you have.

MR. HARRIS: Your Honor, the last address I have was as of the date Falcoff testified in the grand jury, which was in Peoria.

THE COURT: How about the old man?

MR. HARRIS: All I can do with regard to the father, who was not subpoenaed by me but who showed up with his son is to see if there is an address in his testimony.

MR. BRETTSCHNEIDER: To the best of my knowledge, Judge, there was none. The father gave none and there is no way of finding these people. I have madeevery effort.

THE COURT: You haven't if you didn't ask the

slh6

government until today.

MR. BRETTSCHNEIDER: Judge, we have the addresses of Falcoff.

THE COURT: Well, I am not going to take the grand jury testimony but you can mark it for identification so you can preserve your rights on appeal.

It doesn't show very much diligence because you knew about the name of Falcoff from the day the indictment was filed.

MR. HARRIS: The grand jury testimony has been marked. It has a 3500 number.

THE COURT: What is the number?

MR. BRETTSCHNEIDER: 3590.

May I ask the Court to examine it and see whether--

THE COURT: No, because you haven't shown necessity. You made no effort to find Falcoff.

MR. BRETTSCHNEIDER: Judge, I have indicated to the Court what efforts we have made --

THE COURT: They are not satisfactory to me and I decline to take it.

Bring in the jury.

(The jury entered the courtroom.)

THE COURT: Who is the next witness?

MR. BRETTSCHNEIDER: The next witness is Archie

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s1h7 Spiegelman-direct

Spiegelman.

A R C H I E S P I E G E L M A N, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRETTSCHNEIDER:

Q Mr. Spiegleman, by whom are you employed?

A Selective Service, New York City.

b2 Q Where do you work at the Selective Service?

A 252 Seventh Avenue.

Q At any time were you attached to or assigned to the Armed Forces induction center at Fort Hamilton?

A I was.

Q From what years?

A From November, 1968, to October, 1969.

Q What was your job at the center at that time?

A I was a Selective Service liaison representative.

Q As a Selective Service representative down there do you know Major Sangemino?

A I do.

Q Did you ever receive any calls from Major Sangemino?

A I did.

Q Did you ever receive a call from Major Sangemino

about a matter that was outside the City of New York?

A I did.

Q And what case was that, do you recall?

A Well, the case that stands out in my mind was a case that he wanted me to see to it that the man had a psychiatric examination.

Q What was the problem in that case?

A The man had a sexual problem. He seemed to like to have sexual relations with cats.

Q And from what board did that come, if you recall?

A Local Board 3.

Q What is Local Board 3?

A I believe at that time it was in Great Neck.

Q Did you proceed to take care of that matter down in the station?

A I did.

Q Now sir, what were your other duties at the station?

A Well, my responsibility was to coordinate the administrative functioning of the examining station and Selective Service to avoid any problems that could create chaos.

Q Well, what do you mean by create chaos? What kind of problem?

A Well, we had one situation we were there to avoid, like when a father was taken to Fort Jackson, South Carolina, instead of his son. The same name. They took him.

Q Any other cases?

A We have had quite a few. We had fellows that came down with all kinds of animals, snakes, monkeys.

THE COURT: No cats, though?

THE WITNESS: No cats.

Q Did you receive any communication from Major Sangemino or any cards from him?

A I don't remember any cards. The only communication I would get was over the phone.

Q Were there many communications you had with him?

A Yes.

Q Were there any instances that you recall that he called and didn't give you the full information about?

A Yes, one in particular. He called and had me arrange to have a man - make sure a man got a psychiatric examination but he forgot to tell me what was wrong with this fellow.

Q What was wrong with him?

A He was some kind of paranoid and all I remember is that when he came in he started waving a straight razor in my face, and I made sure he got a psychiatric examination.

Q Did you call up Major Sangemino and tell him about it?

A Yes, I told him plenty.

THE COURT: You told him, "Next time let me know?"

THE WITNESS: "Next time let me know."

BY MR. BRETTSCHNEIDER:

Q Now sir, how many times did you get communications from Major Sangemino?

A Well, it was quite often. I couldn't give you the exact figure.

Q Did you get it from any other people in Selective Service?

A I certainly did. Every staff officer in our headquarters.

Q Did you handle any cases of people outside the City of New York?

A Yes, I did.

Q Now, you were assigned to Selective Service headquarters or employed by the Selective Service headquarters in the City of New York?

A Yes, sir.

Q You were not a member of the state component branch of the Selective Service, were you?

A No, sir.

Q But did you handle cases of people from Nassau County and outside the city?

A I did.

Q Now, at any time in your dealings with Major Sangemino, did Major Sangemino ever give you any information that he wanted any particular case handled in a particular way?

A No. He just told me to make sure the man got a particular type of examination.

Q Did he ever tell you to do anything with reference to affecting the outcome of the examination or influencing the outcome of the examination?

A No, sir.

Q Now, what would you do when you received a call from Major Sangemino?

A I would arrange by putting a note on the young man's physical examination papers to come into our office when he reports. At that point I would take him downstairs to the chief medical officer, of which there were three at the time, make sure that they would prepare a consultation sheet for whatever type of examination he needed.

Q Now, your handling of cases of these people that calls were made, were they cases of people who had certain problems?

A Definitely.

Q These weren't cases of people who wanted to go in or wanted to be drafted or in any way did not complain about anything?

A No. These definitely had problems.

Q So that all the cases that you dealt with were problem cases?

A Well, in that light, yes. When they were referred to us they had some sort of a problem.

Q Now sir, when you were there did any of the Selective Service people, liaison officers, take any particular individual to any doctor, or a particular doctor?

A Not other than the chief medical officers.

Q Who would assign the registrant to an examining doctor?

A Well, the procedure was that the chief medical officer would give the guy -- if it was a psychiatric problem he would give it to the psychiatrists who were on duty at the time; it could be one, it could be two, sometimes three on heavy days.

Q How many people were you running through at that time?

A We were running to 800 to a thousand a day.

Q Were there many times whe[illegible] person had a consultation

and wasn't given a consultation?

A Many times. We had to hold these fellows over.

Q Were there any times when Major Sangemino or anybody from Selective Service called you to see that the kid got his examination the next time he was to report down there?

A Yes, many times.

Q Was that because he had not gotten it the second time?

MR. HARRIS: Your Honor, I have to object.

THE COURT: Yes, sustained.

Q Do you know any case of Major Sangemino's where you received a communication from Major Sangemino and you did anything to unlawfully or illegaly influence the outcome of any particular case that he had mentioned to you?

A Not for him or anybody else.

Q Do you know anybody else that did --

MR. HARRIS: Objection to that question.

THE COURT: Sustained, yes.

Q Sir, do you know other people that know Major Sangemino?

A I know many people.

Q Outside the office of Selective Service?

A No.

s1h14 Spiegelman-cross

MR. BRETTSCHNEIDER: No questions.

You may inquire.

CROSS EXAMINATION

BY MR. HARRIS:

Q Mr. Spiegelman, it would be fair to characterize the cases in which Major Sangemino called you which were outside your jurisdiction as bizarre cases, would it not?

A No, not all. This particular one stood out in

b3 my mind -- a couple stand out in my mind.

Q Now if a man has an ailment which might or might not disqualify him, he could come down with his medical documentation without being presented by you to the chief medical officer, could he not?

A Definitely.

Q And thousands and thousands of people went through that process, did they not?

A Definitely.

Q And out of the thousands that went through Fort Hamilton there are only relatively very, very few that got this special treatment of having the liaison officer--

MR. BRETTSCHNEIDER: I am going to object to "special treatment," the characterization.

THE COURT: Disregard the characterization.

Ask him what proportion or number, if he knows, of

those who went through.

Q What proportion in a day of, say, a thousand examinations would you personally escort the registrant to the chief medical officer?

A We were doing about 6 to 10 a day.

Q 6 to 10?

A Yes.

THE COURT: And in each case you would repeat to the chief medical officer whatever message you had received from your headquarters, is that right?

THE WITNESS: Yes.

THE COURT: If your headquarers had told you that this man had an emotional problem with cats, that's what you told the chief medical officer?

THE WITNESS: Yes.

THE COURT: You were merely carrying a message?

THE WITNESS: And the medical evidence if it was there.

BY MR. HARRIS:

Q Now, of the 6 to 10 cases isn't it a fact that there was generally a particular reason why your services were required and why the person could not go through the, normal procedure?

MR. BRETTSCHNEIDER: I object to the form of the

question.

THE COURT: Overruled. If he knows.

A The reason that they brought it us is that the kid wouldn't get lost in the shuffle or wouldn't get the proper examination.

Q In other words, special treatment?

MR. BRETTSCHNEIDER: I object to the term "special treatment."

THE COURT: Yes, I will sustain it.

The purpose, as I understand it, was to make certain that this problem received attention and that he did not pass through the chain and get taken into the Army.

THE WITNESS: That's right, especially if he liked cats.

Q In a case, for example, where the alleged condition of the registrant involves something like overweight, did you have a lot of registrants where you personally took a person to the chief medical officer for overweight, for example?

A I don't remember ever for overweight. Usually it was obvious.

MR. HARRIS: Thank you. No further questions.

THE COURT: Anything else from Mr. Spiegelman?

MR. BRETTSCHNEIDER: No.

THE COURT: Thank you, Mr. Spiegelman. You are

excused.

(Witness excused.)

THE COURT: We are going to take an early lunch break today, members of the jury.

We will resume the trial at 1:15. Please return on time.

(Recess for lunch until 1:15 P.M.)

* * *

MR. BRETTSCHNEIDER: Susannah Gross.

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S U S A N N A H G R O S S , called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRETTSCHNEIDER:

Q Mrs. Gross, where are you employed now?

A I am a program planner at Community Service Society.

Q Between the years '68 and '72, where were you employed?

A I ran the local service office for the late William F. Ryan, member of the House of Representatives.

Q Is that his New York office?

A That's correct.

Q And do you know Major Sangemino?

A Yes, I do.

Q And when did you meet Major Sangemino?

A We were what I termed phone friends from 1967 until the congressman passed away in 1972.

Q Did you call about Selective Service matters or were any of your conversations about Selective Service matters?

A All of them were in regard to problems in Selective Service cases.

Q And did you call on behalf of the congressman?

A On behalf of the congressman's constituents, yes.

Q What kind of problems did you ask him about or were your conversations?

A Young men who resorted to their congressional representative were ordinarily those who had run into some particular snag in the Selective Service law and had a particular problem. Many of the cases were young men who alleged that they had a physical disability that had not been taken into full consideration in a physical exam.

Q And did you call them from Congressman Ryan's office to say that the man receive any type of examination or to say that he complained about the examination at the Armed Forces Examining Station?

MR. HARRIS: I object. This is leading. This is direct examination.

THE COURT: Leading. Frame a new question.

What did you do when you got these complaints?

THE WITNESS: I ordinarily reviewed the material that the young man had prepared ordinarily with his family physician. Often I recommended that they either be re-

examined by a physician or that they seek counsel if that seemed appropriate, or if on the surface the material appeared bona fide, I suggested I would try to arrange for this material to be definitely included in their record.

Q By definitely included, that means referred to the AFEES station?

A Yes.

Q Did you ever call Major Sangemino and ask him what happened to any of your constituents when they went to the board as to whether they had passed or what classification they got?

A Yes.

Q Did you ever ask him to find out about what was the reason for the classification?

MR. HARRIS: I will object to the leading nature of this inquiry.

THE COURT: Yes, it is leading. You can ask her what she did with respect to any particular cases, OR generally.

Q Can you tell us what you did with cases in general?

A The question is so general that I am a little troubled how to answer it.

THE COURT: Put a new question.

Q With reference to a physical disability, what kind of problems would come up with physical problems in reference to Selective Service?

A We would see a constituent who had a history or a series of complaints of back trouble or psychiatric trouble or a similar kind of medical problem, they had been found 1-A, and the congressman felt that they should be entitled to be reexamined and outside medical evidence should be reviewed by the Armed Forces.

Q Did you ever indicate to Major Sangemino that you wanted a reevaluation or have him reexamined?

A Yes.

MR. HARRIS: Objection to leading.

THE COURT: It is leading, but I assume there is no real argument about that.

You called him up and told him about such cases?

THE WITNESS: That is correct.

THE COURT: What did you tell him?

THE WITNESS: I would describe the evidence that I had seen and the general case situation that the young man had described to our office and ask him if there was a procedure available under the law for the young man to be reexamined.

THE COURT: Did you give the name and Selective

Service number of the man?

THE WITNESS: Sometimes. The major's advice ordinarily was based on a set of facts, not necessarily a name.

Q Now, Miss Gross, do you know other people who know Major Sangemino?

A Yes.

Q Have you had occasion to discuss Major Sangemino with these other people?

A Yes.

Q And as a result of your conversations --

MR. HARRIS: I am going to object to the foundation based on the earlier testimony they are phone friends.

THE COURT: Yes.

I understood you to say you talked to him only on the phone during these years.

THE WITNESS: That's correct.

THE COURT: You never spoke to him personally during '68, '69, '70 and '71?

THE WITNESS: That's correct.

MR. BRETTSCHNEIDER: That is not the question I asked.

THE COURT: She didn't even know him except on

the telephone. That is what she says.

You may ask another question.

Q Did you talk to other people with reference to Major Sangemino?

A Yes, many times.

Q Did you discuss his reputation with these other people?

A Yes.

Q And as a result --

MR. HARRIS: I am going to object.

THE COURT: Let him show where and who she discussed it with, the area, anyway.

Q Do you know who you spoke to?

A Yes, I do. Would you want me to name them or in what capacity they were?

Q If you can name them and in what capacity, it would be helpful.

A The late Congressman Ryan was well known in terms --

THE COURT: Just tell us where and who you discussed it with.

THE WITNESS: There were many draft counselors during the years of the Vietnam War who came to Congressman Ryan specifically when they encountered difficulty with the

Selective Service in general. There were many attorneys, there were many religious organizations, there were some of the Quaker organizations who came to us and the professional and volunteer people who worked for these various draft counseling services who sought advice or access to the Selective Service System would discuss with me and with the congressman a given set of facts on given cases.

THE COURT: He is asking you about discussing Major Sangemino, his character and ability.

Who did you discuss them with?

THE WITNESS: With volunteer and professional draft counselors working under the auspices of Free Legal Service agencies in New York City, American Friends Service Committee, Catholic Agency for Draft Counseling, Jewing Agency for Draft Counseling, several universities, Fordham and Columbia University draft counselors.

Q As a result of these conversations, were you able to formulate an opinion as to the reputation of Major Sangemino?

A I believe so.

Q And what was his reputation with respect to honesty and morality?

MR. HARRIS: Objection.

THE COURT: The objection should have been to the last question, Mr. Harris.

MR. HARRIS: It is.

THE COURT: Did other people express view to you about his reputation?

THE WITNESS: Yes, they did.

THE COURT: I will allow the question.

What did they say?

THE WITNESS: It was beyond reproach, that he had an excellent reputation.

MR. BRETTSCHNEIDER: No further questions.

CROSS EXAMINATION

Xx BY MR. HARRIS:

Q When a registrant came to your office with a particular medical problem or medical evidence as you have described, did you ever send him to his Local Board or headquarters directly?

A On some occasions.

Q And on some occasions you made inquiries in the congressman's name, is that correct?

3 A On all occasions.

Q You knew where the Selective Service headquarters was, didn't you?

A Certainly.

Q And you could have sent him directly to Selective Service headquarters?

A Certainly.

Q And there was no reason for a congressional inquiry, was there?

THE WITNESS: Your Honor, do I have to answer that the way it is phrased?

THE COURT: Was there a reason for congressional inquiry in these cases?

THE WITNESS: Is there a reason for representative government?

THE COURT: That is a good answer.

A Of course.

THE COURT: That is a good answer. Frame another question.

A The representative there is to assist you when you are in trouble with the government, as far as I am concerned.

THE COURT: Is being eligible for the draft being in trouble with the government?

THE WITNESS: No. When you are not being given proper treatment, this is the congressman's job, in my opinion.

THE COURT: Did you have a way to form an

opinion as to whether these people had been properly treated by Selective Service?

THE WITNESS: On some occasions, I believe, sir.

Q Were you familiar in general with the Selective Service law after dealing with Major Sangemino and the registrants for the period 1967 to '72?

A Yes.

Q And you were familiar with the right to appeal a classification to one's local draft board, were you not?

A Yes.

Q Did you advise these people who felt their medical evidence was wrongly overlooked to appeal their classification?

A Yes.

Q Then there was no reason for you to call Selective Service headquarters, was there?

A When an induction was scheduled for tomorrow morning, yes, there was.

Q What percentage of the cases of registrants that came to you was scheduled for induction the next day?

A 20 per cent, 30 per cent.

Q Let's talk about the other 70 or 80 per cent. As to them there was no reason you couldn't have referred them to their appeal rights, is that right?

A The draft boards were manned by volunteers who were not accessible to the phone, secretaries who often did not know the Selective Service regulations, who instructed congressional offices to send letters when there often was a very short period of time involved, were the only people responsive at local boards and it became imperative to solve problems to go above the local board.

Q You mean Major Sangemino was above the local board?

A That's correct.

Q He could do things the local board couldn't do?

MR. BRETTSCHNEIDER: I object.

THE COURT: Overruled. Her understanding. Was it your understanding he could do things the local board couldn't do?

THE WITNESS: My understanding was that the major had an overview of the entire system which made it possible to pinpoint where access to the system for review and redress of grievances would be available.

Q You were familiar with the appeal rights that a registrant had when he received a classification, weren't you?

A Yes.

Q And you were familiar that every time a regis-

trant is classified he receives a card with his new classification and on the back of it it tells him how to appeal, is that right?

A If he can read and understand it, yes, that's correct.

Q Of the 70 or 80 per cent that weren't being inducted the next day, were you able to form an opinion as to how many could read?

THE COURT: This is getting a little far afield.

MR. HARRIS: That is the answer, your Honor.

THE COURT: Please don't argue.

Am I correct in understanding that you were requesting the defendant in this case to look into certain cases where you believed a man was entitled to a medical deferment and he hadn't been granted such a deferment?

THE WITNESS: I was in no position to decide whether he was entitled to deferment. I was in a position to make a judgment that something ought to be given a second look and that the system was creaky and, as many of our public services, it didn't always work the way it did on paper and here was a man who believed that it ought to work the way it was on paper, fairly --

THE COURT: And this man could get that case given the attention that you believed it required?

THE WITNESS: That's correct.

THE COURT: All right. So you believed when you sent these names up to him or called him that he could straighten out anything that needed to be straightened out?

THE WITNESS: That he could give advice about proper procedure, yes, sir.

THE COURT: Is that all we are talking about, advice as to proper procedure? Take an appeal, that's the advice, isn't it? Are we talking about more, taking a look at the records and making a new decision as to a disability?

THE WITNESS: Your Honor, if you are asking me whether I ever believed that the major had the power to change the decision, I never believed that. I understand the system well enough --

THE COURT: What did you understand he was to do when you gave him a name?

THE WITNESS: I understood that he alerted some kind of counterpart at the examining station to tag a case so that the physicians would know there was extra evidence attached and they should review that evidence when they were making their exam.

THE COURT: All right.

THE WITNESS: If I put a red label on something

else and say, "Special attention, please," which happens, thank goodness, in many areas.

THE COURT: All right.

BY MR. HARRIS:

Q Were there any cases which came to you requesting assistance in which you instructed them as to their appeal rights or directed them to their local board without making inquiry?

A Yes.

Q And in what kind of cases were these?

A Where I felt the young man was articulate enough, educated enough and able enough to represent his own interests well or, in some fortunate instances, wealthy enough to have counsel, and, in addition, when there was sufficient time before an induction date for the entire appeal procedure to be played out.

Q Did you ever instruct any of these registrants specifically with medical problems simply to take their medical evidence with them to the physical and give it to the doctor?

A Yes, many times.

Q Of the cases in which you called Major Sangemino involving medical problems, what was the reason that you didn't simply instruct them to take their medical evidence

with them to the physical?

MR. BRETTSCHNEIDER: I will object to the form of the question.

THE COURT: Overruled.

A It's very difficult to answer your question because part of it is based on my own professional judgment. In some cases there was a kind of subtlety to medical information that I felt ought to be drawn attention to. In others an appeal might have been exhausted.

It's very difficult to answer your question in very general terms.

Q Do you have any medical training?

A Yes, I do.

Q What is your medical training?

A I did several years of medical social work.

Q But you are not a doctor, are you?

A No, I am not.

Q In these cases you just mentioned, there were several cases in which appeals were exhausted that you called Major Sangemino. For what reason did you call him in these cases where the legal appeal had been exhausted?

A Because there is a physical exam given at the time of induction, and it was another point at which the

young man's health might be examined by the military physicians.

Q You were aware that every inductee receive some sort of reexamination on the day of induction, weren't you?

A That's correct.

Q And that any inductee can bring any medical evidence he has with him that day?

A When there are hundreds of young men being examined --

THE COURT: Just don't make a speech. Yes or no, are you aware or are you not aware?

THE WITNESS: I am aware.

Q You could have advised these registrants of that procedure, could you not have?

A Yes.

Q And yet you called Major Sangemino?

A That's correct.

MR. HARRIS: No further questions.

REDIRECT EXAMINATION

BY MR. BRETTSCHNEIDER:

Q Miss Gross, why did you call Major Sangemino on these cases Mr. Harris just asked about?

A I felt for one reason or another they were

exceptional cases that needed exceptional attention.

THE COURT: And that he could get them exceptional attention, is that right?

THE WITNESS: That's right.

THE COURT: All right.

Q And was it your understanding that anything illegal was to be done with respect to these people?

A Absolutely not.

Q And that any illegal influence was to be placed upon the board for these inquiries by the congressman?

A Absolutely not.

Q Did Major Sangemino call you back and advise you as to the outcome of these people that had been down at the draft board, down at the induction center?

A In most instances. Sometimes I phoned him.

Q That is to find out what happened to the man when he went down to the induction station.

Did he ever ask you for any money or did you ever give him any money for this?

A Absolutely not.

MR. BREITSCHNEIDER: I have no further questions.

RECROSS EXAMINATION

BY MR. HARRIS:

Q During your years working on the staff of Congressman Ryan, you became aware that a congressional inquiry gets more attention than an inquiry to an agency from a regular citizen, is that right?

A That's correct.

Q You knew when you called Major Sangemino about a case, when you called in the name of the congressman, that case would get a special look?

THE COURT: She already told us that.

THE WITNESS: That is our system.

THE COURT: It sure is.

MR. HARRIS: Nothing further.

THE COURT: You are excused.

(Witness excused.)

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Q Will you tell the court the facts and circumstances of that meeting?

A Yes.

Nathan Lemler came into my office. He introduced himself as a medical doctor. He told me that he was a brain surgeon who was no longer practicing.

He told me that he was running a school called Remedial Education that was teaching and tutoring autistic children.

He told me that it was a non-profit institution; that he didn't get remunerated for this; that he was involved now in charitable work, and another portion of his work was in placing college students.

b2 During that visit -- I would hate to swear to it about any particular case, but from hearing everything I have heard I think that he brought to me a case about a student trying to get a deferment; and I asked him how he would become involved in this; and he said that because he was trying to get kids into medical school, that once in a while they would have problems with Selective Service, and he said -- or, rather, he asked me that any time he had a problem could he call me for advice?

I said absolutely, and that was it.

BY MR. BRETTSCHNEIDER:

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Q Continue, sir.

A The messenger came in and gave me the envelope and left.

I didn't open it up immediately, but when I did I looked inside and I was kind of surprised because in the envelope was an all expense trip to Las Vegas.

I have to explain that because it was not just an ordinary trip. He had made arrangements for me and my wife to be taken by limousine to the airport and go on an airplane first class to Las Vegas where a seat, a first class seat, was awaiting me and my wife for two weeks. I was not to put my hand in my pocket for a penny; he had redeemable coupons of some sort, and while I was in Las Vegas there would be a limousine waiting at my beck and call for 24 hours a day whenever I needed it.

Upon leaving Las Vegas I would have a limousine taking me back to the airport, first class, back to my home, and that was it.

Q Do you remember what day this was?

A Well, it was on the day I called -- Mr. Harris provided us with that chart -- and that was the day the messenger came in and gave me the tickets, and then I called Mr. Lemler.

Q And did you have occasion to examine the books,

10 to 13; that is, the registration books?

A The sign-in logs?

Q The sign-in logs for the building.

A Yes, I did.

Q Is that the date that you refer to as the 15th, June 15th?

A 1971.

Q And is that the same date that Mr. Mofschowitz's name appears as having entered the building?

A Yes, precisely.

Q Now, was there any money in this envelope?

A There was no money. There was some sort of redeemable coupons but I can't recall them now. I didn't write anything down; I didn't Xerox anything; I can only recall right now what I told you.

Q What did you do with these tickets, if anything?

A I returned them to Dr. -- to Mr. Lemler. I called him up. He wasn't in. And I called his secretary. I said "Thanks for the tickets but I would have to return them."

The message came out "Thanks for the tickets."

Q Did you, in fact, return them?

A I absolutely did.

Q Did he ever send you any more tickets?

A Yes, he did after he called me. He sent me an

all expense paid trip, the whole deal, for Puerto Rico.

Q What did you do with those tickets?

A I called him up. I was pretty angry with him because the first time it could have been careless, but the second time was stupidity, and I called him up and told him not to do anything like that again; there was no way I could accept these trips, and I returned them to him.

Q Prior to and after that did you ever receive anything from Dr. Lemler?

A Prior to that and after that, yes, I did. Finally one Christmas upon great pressure I accepted a bottle of after shave lotion from him.

Q Is that the only thing you ever received from him?

A Absolutely, yes.

Q Now, sir, did you have occasion to deal with Nathan Lemler?

A Deal with him?

Q Yes.

A Nathan Lemler would call me up or come into my office and he would say to me -- we were friendly; he would call me Bill -- he would say, "Bill, I have a problem." And I would say, "What's your problem" and he would tell me his problem; it had to do with a registrant; he would describe the case to me; he would swear to this and swear

to that that this is the case and this is the condition, whether it was medical, whether it was -- whatever it was, he would describe the case to me and then say, "Bill, what should I do?"

I thereupon advised him what he should do and he took it from there. I knew not after that what he did.

Q Did you agree or conspire with Nathan Lemler to arrange or suggest that any registrant's mother be incarcerated or admitted to the South Oaks Hospital?

A Sir, no, sir. I never did that.

Q Do you know a gentleman by the name of Dr. Myron Teitelbaum?

A I do not.

Q Have you ever seen Dr. Myron Teitelbaum?

A I have not.

Q Have you ever spoken to Dr. Myron Teitelbaum?

A I have never spoken to him.

Q Did you on occasion give Dr. Lemler or Mr. Lemler certain information concerning registrants?

A Yes.

Q And is this information any different than you have given to any other persons?

A No, except that it pertained to a particular case, because there are no two cases that are alike. Every case had

different advice.

Q Now, did you receive any inquiries with reference to any other cases of Selective Service from any authorities whatsoever?

A Correct.

Q From whom?

A I received inquiries from the general public, walk-ins off the street, mothers and fathers, Board of Education, American Friends Society, the American Civil Liberties Union, lawyers independently, congressmen, senators-inquiries from other state headquarters; you name and I received a call or a case like that.

Q About how many cases a week did you handle with respect to this information that you gave out?

A There would be no way of telling you but I wouldn't be lying if I told you that I could handle two dozen cases a day.

Q Now Major Sangemino, do you recall a case of a Resnick?

A Vaguely, but yes.

Q Do you know what happened to Edward Resnick's case in Selective Service?

A You mean the ultimate result of the Resnick case?

Q Yes.

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A No, I do not know what the ultimate result in b3 that case was.

Q Now, sir, what were your duties in Selective Service?

A Each staff officer had several assignments, and I did -- which period are you referring to, because I had many titles?

Q When did you get to Selective Service?

A In March, 1966. At that time I was assigned as assistant chief of the field division under Mr. Joseph Winckler.

Q And under Mr. Joseph Winckler what were your responsibilities?

A To learn Selective Service, that was my main responsibility, because it takes several years to begin to know what Selective Service is all about, all the nuances and all the regulations. The main thing is, I was learning and I was training. I don't want to confuse the court -- the thing is, how can you learn if you don't know Selective Service. I was training in methods of having to personally deal with the public --

THE COURT: You had an apprenticeship with Mr. Winckler, is that right?

THE WITNESS: Yes.

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BY MR. BRETTSCHNEIDER:

Q Now, did there come a time when you changed your position?

A Oh, yes. I knew these dates before. September, 1969, the State Director of New York City appointed me as Manpower and Training Division Chief. I became the Chief of that division September, 1969, that's right.

Q What is your present job?

A I am now Chief of Local Board Operations for New York City.

Q When did you become Chief of Local Board Operations for New York City?

A That is only recently. About a year.

Q Now, do you have occasion to contact the AFEE station in reference to any cases?

A Not now but I did then.

Q Well, there is no --

A There is no induction today.

Q During the period that Dr. Lemler testified to did you have occasion to call the AFEE station?

A Yes.

Q Was it often?

A Often.

Q What was the purpose of calling the AFEE station?

A It was a courtesy. When congressional assistants called, all these people I mentioned before, or a mother or father came in off the street and they presented me with certain information and were very concerned about what was going to happen to the young man, the registrant, I would call -- if he was going to the AFEES, of course -- I would call the AFEES and I would -- well, let me just get my thoughts on that a minute, because there were times I would send the man down to the AFEES; sometimes I would give him my card to see a certain individual if something specific was necessary. There were times when I would call the AFEES liaison agent and I would have him either pick a man out of the lineup - it all depended. There were so many variables there --

Q Now who was at the AFEE stations?

A I think I didn't really finish my answer, I am sorry. I said courtesy. You see, when a man goes down to the Armed Forces examining entrance station, aside from the fact that these young boys mostly are terrified, they are frightened, it's a new experience; Selective Service is their first association with the government, they are afraid they are going to be inducted, and then at the end result they will not find out for maybe two weeks what happened to them.

This is the point I am trying to bring out, that

all these calls to the mothers, the fathers, the congressmen, whoever, whatever, Mr. Lemler, was so these people would not have to wait two weeks to find out the end result, because the man would not knowwhat his classification was and what the determination was until the Army sent the notification to Selective Servic nd then they could prepare paper work to get back to the man.

This w a courtesy and I used it very often. If I could save people one restless night I would call the station and find out so they didn't have to wait for it.

Q Now, who was at the AFEE station?

A Are you referring to Fort Hamilton?

Q I am referring to Fort Hamilton. Who are the people in liaison?

A There were several men at Fort Hamilton. The names I can give you. Most prominent would be Mr. Odell, Mr. D'Ambrosi, Mr. Spiegelman, a Mr. Lebrun who served there part time but as a fill in; he would be mostly at 39 Whitehall Street. There was another man, Mr. Forbes who I understand has passed away; and then another man, a sergeant, retired, a Mr. Creasy who was there for a short while.

Q Do you know where Mr. Creasy lives now?

A No, I don't.

Q Now, did you ever call up any of these liaison

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MR. HARRIS: Your Honor, I wouldn't know unless I check my chronology as to the date.

THE COURT: Do you have any independent evidence which establishes where 3597 for identification was found?

MR. HARRIS: Your Honor, I may if you will give me a moment.

THE COURT: All right.

I think you ought to consult your records and talk with counsel for the defendant and see if you can't resolve this matter satisfactory to both of you. If you can't I will go into it further tomorrow with you. I don't think there is any need to examine further on it tonight.

MR. HARRIS: One more question.

THE COURT: Yes.

BY MR. HARRIS:

Q Look at 3597, the EEG.

Does that bear any stamp as ever having been received by any Selective Service Board?

A No, it does not.

Q Does it bear a stamp as having been received as medical evidence at the AFEE station?

A No, it does not.

Q When medical evidence is received at the AFEE station is there a stamp placed on the medical evidence?

A It is routine that it would be, yes.

MR. HARRIS: No further questions.

THE COURT: Why don't you attorneys talk about this matter and see if you can resolve it to your mutual satisfaction. I am not precluding anybody and I am not precluding the defendant in any way, but I think it would be prejudicial to get into an issue of genuineness of papers until you are sure exactly what the facts are. If you are certain of course youcan go ahead.

MR. BRETTSCHNEIDER: Judge, there is no question in my mind now, nor do I think in the U.S. Attorney's mind-- I am not speaking for Mr. Harris -- that that document is not a forgery --

THE COURT: I don't think anyone says it is a forgery, but the concession made by you at the side bar in our conference, sir, was that when the major had examined these papers in the office of the United States Attorney, that this particular Government's Exhibit 3597 for identification was contained within and a part of the Selective Service file. Now it either was or it wasn't. If it was, of course it is proper to bring that out at the trial. If it was not, and you satisfy yourself that it was not, it seems to me it would be extremely hazardous for the court to entertain that type of proof in the presence of the jury, because

you ought to find out the facts first.

If you are satisfied that you are correct in your proffer, of course you may bring it out, but it looks like maybe you are not.

MR. BRETTSCHNEIDER: Judge, all I can explain to the Court is that Major Sangemino went in and he wrote down--

THE COURT: You better confer with each other and if you persist in your contention that that paper was in the Selective Service file and not derived from some other place you may bring it out, but it may apparently not be so, and I think the government ought to tell you where they say they got it.

If somebody has been removing things from the file that is a very serious matter, but this does not have the stamp of the local board on it, and the government has to know where they got it. They ought to be able to prove to your satisfaction where they got it without coming before me on it.

MR. BRETTSCHNEIDER: Assuming they were to prove they got it --

THE COURT: Don't assume; let's find out.

Where did you get it from?

MR. HARRIS: It was given to me by Falcoff.

THE COURT: I think you better confer. I am not

precluding you, but I think it would be not in the interest of justice to assert such a thing and then have the government come forward and prove that it wasn't so, which they may be able to, starting with the absence of the stamp.

MR. BRETTSCHNEIDER: No question, but even assuming--

THE COURT: You can do as you please.

MR. BRETTSCHNEIDER: But even assuming that, Judge, I would strongly submit that this evidenve is certainly evidence that would benefit the defendant, and because we cannot find Richard Falcoff, as I indicated now, it would be a very strange thing for the government to be able to conceal this type of evidence of a previous --

THE COURT: If the government took it out f Exhibit 6 between the time that he examined it in the office of the United States Attorney and the time it was offered into evidence in this case, that would be an extremely serious matter. However, if that's not so, and an inquiry on your part shows that it is not so, it would not be wise to assert that fact before this jury and have them go and hang it around your neck if in fact they got it from Falcoff.

Now you satisfy yourself with the facts, where the truth lies, and I am giving you time between now and tomorrow to find out what the story is.

MR. BRETTSCHNEIDER: Judge, if the Court pleases,

I have no quarrel with the U.S. Attorney as to where he got it. The only quarrel is that the defendant says when the file was given to him this was what was in it.

THE COURT: In the Selective Service file?

MR. BRETTSCHNEIDER: In the Selective Service file when it was given to him to review. Where it got to, or who put it in, or who took it out, or whether, in fact, it was ever a part of it in the first instance, we do not know.

THE COURT: That's important, isn't it?

MR. BRETTSCHNEIDER: There is no way to find out because we--

THE COURT: I don't agree. I think you can find out to your satisfaction but you ought to be given a chance to, but I am not precluding you; you may bring out whatever testimony concerning this document you deem appropriate, but just find out where you stand before you start.

I will see you all in the morning. If you can't satisfy yourself with respect to whether this file had some part of the papers that were properly in there removed, we will go forward.

All right, we will be in recess.

(Adjourned to Wednesday, April 16, 1975, at 10:30 A.M.)

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At this time, just as a matter of convenience, I am permitting the witness who is presently testifying, that is, the defendant, to withdraw from the stand and put two other witnesses on out of order, after which he will return to the stand and his testimony will continue.

Jurors, disregard the fact that we are taking these people out of order. It has no significance whatsoever insofar as your function in this case is concerned.

Who do you want to call, Mr. Brettschneider?

MR. BRETTSCHNEIDER: Thomas Maher.

T H O M A S M A H E R, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRETTSCHNEIDER:

Q Mr. Maher, what is your occupation?

A I am an Assistant U.S. Attorney with the Eastern District of New York.

Q Sir, were you ever assigned to Selective Service?

A Yes, I was.

Q And what years?

A From 1966 through 1972.

Q And do you know the defendant, Major William Sangemino?

A Yes, I do.

Q And when did you first meet Major Sangemino?

A He and I were in a Reserve outfit stationed in Fort Totten. It was the 5th of the 51st Artillery at Fort Tilden.

THE COURT: Fort Tilden or Fort Totten?

THE WITNESS: Fort Tilden.

Q Now, at the time that you commenced your activities with S ve Service, was Major Sangemino in the office of Selective Service?

A When I first became acquainted with Major Sangemino?

Q Yes.

A No, he was not then in the office.

Q When did Major Sangemino, to your knowledge, become associated with Selective Service?

A I believe it was in late 1966.

Q And did you have anything to do with his coming into Selective Service?

A Yes. The State Director, who was then Colonel Paul Akst, had asked me if I knew of any officers, Reserve officers, who might be interested in going on active duty and being assigned to Selective Service. And I had asked Bill Sangemino -- and asked others, too -- if he would be

b2

interested, and he said he would. I then suggested his name to Colonel Akst.

Q Do you know other people who know Major Sangemino?

A Yes, I do.

Q And did you ever have occasion to discuss the reputation of Major Sangemino with these people?

A Yes.

Q And what was his reputation for honesty and integrity?

A As far as his integrity and honestywere concerned, it was quite high, very high.

Q And did you use this reputation as a criterion in the appointment of him to the Selective Service job?

A That and other considerations, yes.

Q What other considerations?

A Well, his competence.

Q Major Maher, you were associated --

MR. HARRIS: I object. I don't believe this witness is a major.

THE COURT: Is he? Are you a major?

THE WITNESS: I am in the Reserves, your Honor, yes.

THE COURT: What is your rank in the Reserves?

THE WITNESS: A major.

MR. HARRIS: I might care to be addressed by my

military rank.

THE COURT: Or even mine.

I will overrule the objection. Go ahead.

Q Mr. Maher, while you were at Selective Service, did there ever come times when you had to call the AFEES station concerning any registrant?

A Yes.

Q And in what cases were they or would they be?

A Well, it would be various types of questions, but all generally involving people who were questioning the finding of the Armed Forces as to whether they were fit for military service.

Q Did you ever send information ormedical records to the AFEES station for consideration?

A I arranged thatmedical information be forwarded to AFEES, yes.

Q And did you talk to the liaison officer at the AFEES station?

A On a number of occasions, sure.

Q Did you ask them to call you back and tell you the results of any of these?

A Yes, I would.

Q And these were inquiries made from people outside, is that correct?

A That's correct.

Q And is there anything improper about your calling or illegal about your calling the AFEES officer in reference to any case?

A No, I thought it part of my duty.

Q And did you give information to people concerning their entitlements to deferments or information concerning deferments?

A Yes, I did.

Q And do you know how many people you gave that to during your period that you were there?

A Well, humdreds.

Q Now, sir, on March 20, 1974, did you have occasion to talk to Major Sangemino?

THE COURT: When was this?

MR. BRETTSCHNEIDER: March 20th.

THE COURT: What year?

MR. BRETTSCHNEIDER: 1974.

A I talked to Major Sangemino on a number of occasions and no doubt in March of 1974 I also did.

Q Did he call in reference to a subpoena?

MR. HARRIS: Objection.

THE COURT: Will counsel approach the side bar.

(At the side bar.)

THE COURT: What is the offer?

MR. BRETTSCHNEIDER: The offer of proof, your Honor, is that Major Sangamino called this gentleman from the Eastern District and asked him about the subpoena that he had received. Now his testimony --

THE COURT: Are you talking about a grand jury subpoena?

MR. BRETTSCHNEIDER: Grand jury subpoena.

Now, he told him certain things about what Title 18 was.

If I recall the testimony of Dr. Lemler it was that he didn't talk very much to him in the conversation they had prior to the time that he went into the grand jury, and this is the same day, and the testimony that the Government offered into evidence in the transcript is Dr. Lemler asking him who was this Major Maher you spoke to, which establishes that there must have been a conversation immediately before the grand jury for that statement to be in, because the question is proposed by Lemler, and there was no reference to it at any other time. It shows

that there was a conversation prior to the time they went into the grand jury.

THE COURT: But how does that make the conversation relevant?

MR. BRETTSCHNEIDER: Because the defendant is going to testify to that conversation as to what was said between Lemler and him, and we have established that there was, in fact, a conversation because that is the only way that Lemler would have known.

THE COURT: How was what was said between this witness and Maher in 1974 relevant or material here?

Could I have the transcript? It is in evidence. I think it is 15.

MR. BRETTSCHNEIDER: It is to establish that there was a conversation.

THE COURT: Yes?

MR. BRETTSCHNEIDER: And what was said in there.

THE COURT: What was said?

MR. BRETTSCHNEIDER: Well, the defendant is going to testify to that.

MR. HARRIS: What is the relevance of what Maher said to him?

MR. BRETTSCHNEIDER: Because Lemler testified he didn't talk to him about anything. He just hello and

he went in. Yet there's a statement in there when he asked him about who was this Mr. Maher you spoke to, and this is the gentleman.

THE COURT: I don't see the relevance, Mr. Brettschneider.

MR. BRETTSCHNEIDER: Well, it is a question of credibility also, Judge.

THE COURT: As to what?

MR. BRETTSCHNEIDER: As to whether there was a conversation before they went into the grand jury where Lemler said certain things to the defendant, and the only way we can establish that in fact there was a conversation is, he asked about Mr. Maher, and how would he know about Mr. Maher if he didn't talk to him before he went into the grand jury?

THE COURT: There is certainly nothing in this transcript about the conversation with Mr. Maher or Major Maher which has anything to do with the issues in the case.

MR. BRETTSCHNEIDER: He said: Who was this major within you spoke?

This will establish that Sangemino spoke to Mr. Lemler before they went into the grand jury because this transcript is taken immediately after his --

THE COURT: All right.

MR. HARRIS: Your Honor, he has already testified that he probably spoke to Sangemino on the 20th of March, and that is sufficient for that purpose.

THE COURT: How are the contents of the conversation relevant?

MR. BRETTSCHNEIDER: Just that this is the first time he knows before he went to the grand jury what had happened.

You see, the testimony of Lemler at this time is that he didn't speak to him, and then the conversation comes in later. There was a conversation before, and the conversation later, the one that was taped, had reference to the ones before because certain things were said before. All I want to establish is not anything of any consequence; he is going to say that he called up and asked what Title [illegible] as, and he told that to Lemler when he went down a couple of minutes later to the office of the grand jury and they had a conversation there.

MR. HARRIS: I won't object to that.

THE COURT: This man was an Assistant United States Attorney in the Eastern District at the time of the conversation?

MR. BRETTSCHNEIDER: Yes.

THE COURT: And he is going around explaining

to defendants what Title 18 means?

MR. HARRIS: And knows that it is in a different district.

MR. BRETTSCHNEIDER: That's right.

MR. HARRIS: I will let him ask it.

THE COURT: All right.

(End of side bar discussion.)

THE COURT: The objection is overruled.)

BY MR. BRETTSCHNEIDER:

Q Mr. Maher, on March 20, 1974 did Major Sangemino call you?

A I know he had been in touch a number of occasions --

THE COURT: No, answer the question. You are an Assistant United States Attorney.

Did he call you? Your answer is either yes, no, or I don't recall. Those are the three permissible answers to that question.

THE WITNESS: Your Honor, I recall him calling me.

THE COURT: All right, frame another question.

Q Was the conversation with respect to a subpoena that was served upon Major Sangemino?

A He did ask me about that

Q Did he ask you what Title 18 was, the title of the code that was mentioned in the subpoena?

A Yes, he did.

Q What did you tell him?

A I looked it up and I told him what it had reference to.

MR. BRETTSCHNEIDER: I have no further questions.

CROSS EXAMINATION

XX BY MR. HARRIS:

Q Mr. Maher, you knew that Major Sangemino was going into the grand jury in the Southern District of New York, didn't you?

A Not until he told me.

Q He told you that?

A He told me after that.

Q Do you often interfere in cases --

MR. BRETTSCHNEIDER: I object.

THE COURT: Sustained.

Q After Sangemino called you did you call me and tell me that a prospective defendant had called you soliciting advice?

MR. BRETTSCHNEIDER: Objection -- withdrawn.

THE COURT: The objection is withdrawn.

Just answer the question.

Q Did you?

THE WITNESS: What was the question?

THE COURT: Please read the question, Mr. Reporter.

(Question read.)

A I called the U. S. Attorney's office here.

Q You called George Wilson, didn't you?

A That's right.

Q And you tried to get information about the basis of the investigation, didn't you?

A I wanted to find out what it was all about, yes.

Q And George Wilson told you that I was the Assistant United States Attorney responsible for this case, didn't he?

A I don't know if he did refer to your name, I don't think he did, not until long after.

Q You never called me to find out, did you?

A You never called me.

THE COURT: Just answer the question.

Q You called George Wilson because Wilson is a friend of yours and you thought you would get information, is that right?

MR. BRETTSCHNEIDER: I object.

THE COURT: Sustained.

Q You didn't call me?

A I called George Wilson because he is a member of this office who handles Selective Service cases, and he is a friend of mine.

Q And George Wilson told you that he wasn't responsible for that particular case?

A That is correct.

Q How many Assistants are there in your office?

A About 40.

THE COURT: By Assistants you mean Assistant U. S. Attorneys?

MR. HARRIS: That is correct.

Q And if you need information about a case you go to the Assistant who is in charge of that case, don't you?

MR. BRETTSCHNEIDER: I am going to object to the form of the question.

THE COURT: I will take it only on credibility. It has nothing to do with the guilt or innocence of this defendant.

A When I talked to George Wilson --

Q No, would you answer my question.

If you want information about a case in your office --

A I didn't want information on this case.

Q I say, if you wanted information about a case that is in your office presently handled by another Assistant United States Attorney you would go to that Assistant United States Attorney for the information, wouldn't you?

A If I knew what his name was, I might.

Q Did you make any memorandum of your conference with Major Sangemino on the 20th of March?

A I didn't have a conference with him.

Q A telephone conference?

A It was a conversation. He asked me a question and I told him the answer.

Q Did you make a memorandum?

A No, I did not.

BY THE COURT:

Q Did he call you at your office?

A Yes, sir.

Q That is at the office of the United States Attorney?

A That is correct.

Q Of the Eastern District of New York?

A That is correct.

Q In Brooklyn?

A That is correct, your Honor.

Q Did there come a time when you learned that Major Sangemino was to be a defendant in a criminal case?

A Yes, I did.

Q At that time did you make any attempt to call the Assistant United States Attorney in the Southern District of New York to inform him of your prior conversation?

A I had told Mr. Wilson and Mr. Wilson knew of this prior information, and as far as I was concerned if he wanted to relay it to you, he could.

Q You can answer the question directly.

Did you call me --

MR. BRETTSCHNEIDER: I object to that, if your Honor please.

THE COURT: You see, I have cautioned this witness who is a member of the bar that questions can be answered responsively, and I am going to instruct you, sir, to answer the question. Don't argue with the examiner.

Q Did you call me?

A No, I did not.

Q And there came a time when you learned I was the Assistant in charge of this case, did there not?

A Yes.

Q At that time did you call me?

A No, I did not.

MR. HARRIS: No further questions.

THE COURT: Anything further for this witness?

REDIRECT EXAMINATION

BY MR. BRETTSCHNEIDER:

Q Sir, did you call for any interest in this case whatsoever after you learned about the indictment?

MR. HARRIS: I object.

THE COURT: Overruled. He can answer.

A Did I call up the U. S. Attorney for anything?

Q Yes.

A No, I did not.

Q Did you make any effort to intercede, to anybody, on behalf of this defendant?

A No, I did not.

MR. BRETTSCHNEIDER: No further questions.

BY THE COURT:

Q What was the purpose of the call to Mr. Wilson?

A Your Honor, Major Sangemino was a friend of mine --

Q Yes?

A Mr. Wilson was a member of the U. S. Attorney's office. First I wanted to inform the U. S. Attorney's office that I received a call from Major Sangemino and I

wanted to find out what the situation was, what is the -- as far as I know Major Sangemino was not subpoenaed as a defendant but perhaps as a witness, and that was my only interest, your Honor, and also to let the U. S. Attorney know that I did receive a call from Major Sangemino.

RECROSS EXAMINATION

XX BY MR. HARRIS:

Q Are you familiar with the form of a grand jury subpoena? You have seen them, haven't you?

A Yes.

Q And you are familiar that at the bottom of the subpoena the Assistant at the bottom of the subpoena lists his phone number, his name and his room number, is that correct. I recall --

MR. HARRIS: No further questions.

THE COURT: Anything else?

REDIRECT EXAMINATION

XX BY MR. BRETTSCHNEIDER:

Q Did you ever see the subpoena at the time of his call?

A No, I did not.

MR. BRETTSCHNEIDER: No further questions.

THE COURT: You are excused.

THE WITNESS: Thank you.

(Witness excused.)

* * *

MR. BRETTSCHNEIDER: Yes.

THE COURT: Your motion is granted as to Exhibits 7 and 7A and they are stricken out.

MR. HARRIS: Your Honor, as to Exhibit 3597, the government has pointed out to Mr. Brettschneider where in the grand jury testimony of Falcoff, Sr. reference is made to it and it is produced, and I pointed that out to Mr. Brettschneider this morning.

One other thing, your Honor.

THE COURT: Please understand, I am not telling Mr. Brettschneider what view he has to take of these facts. He may try the case in any fashion he wishes. I don't want anyone to fall into some mistake of fact. If he is not satisfied, he can put in any testimony he wants.

You understand that, don't you?

MR. BRETTSCHNEIDER: Yes, I do, your Honor.

THE COURT: It seems to me this -- is it 35-- what is the number of it?

MR. HARRIS: 3597.

THE COURT: 3597 was not a part of the Selective Service file at any time but if you want to contend otherwise, I am not preventing you from examining as to it. I just don't like you to fall into it inadvertently.

MR. BRETTSCHNEIDER: If the Court pleases, and

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Mr. Harris has been most forthright in his information given to me, however, Major Sangemino in the case said at the time that he had the opportunity to examine these files he was given four files. Two of them had been indexed, in which he was given a copy of all the documents in those two cases, and that's a file of Crisona and a file of Wuerz. The other two cases, Falcoff was one, there was no inventory of any of the documents in that particular file. The only thing that Major Sangemino knows is that when the Selective Service file itself was given to him, in the two cases of which he did not have an inventory he took down the notes he testified to yesterday, which is Defendant's Exhibit P for identification, and wrote down all those things that were in the file.

Now, whether that particular letter was considered by Selective Service, I do not know. Whether this is a copy of one that was in there and taken out, we do not know because there is no inventory as to what is on there.

Now, I respectfully submit to the Court that perhaps and I suggested it to Mr. Harris, that the document we are talking about, and I will concede that it may have a limited purpose for the jury because it describes an examination of the registrant in 1959, it does not indicate whether he still has that condition or not, but the fact still remains

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that that exhibit is and was in the file.

Now, how it got there I don't know. Whether it was inadvertently put there, I don't know.

THE COURT: If you want to open the question before the jury, you are perfectly at liberty to do so. The only reason I asked for the voir dire last night was I wanted to make absolutely certain that you didn't open the door to an area of controversy if (a) there was no basis for it or (b) you are likely to be wrong in your conclusion or it is likely to divert the jury in a manner unfavorable to your client.

You are perfectly at liberty to offer any relevant testimony in this case you want, including testimony to the effect that this document was in the file, if that's what you sincerely believe.

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MR. BRETTSCHNEIDER: That is not only what we believe but that is a fact.

THE COURT: You say that was in the file all along but for some obscure reason it is one that doesn't have a stamp on it?

MR. BRETTSCHNEIDER: Conceded. I don't know how it got in the file, but when it was given to us that was part of the file. That's the only thing my client can testify to. Whether someone inadvertently put it in there,

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perhaps, but I know at the time my client saw it there was this --

THE COURT: Such matters are for the jury. As long as you understand the underlying facts and everybody's position is clear, you can elicit any information you wish about it. I am not precluding you. I told you that last night.

MR. HARRIS: Your Honor, one other matter, and that is yesterday at the side bar, page 841 of the transcript, your Honor, Mr. Brettschneider said that:

"Prior to the commencement of this trial I showed these documents," referring to Exhibit N, Defendant's N, "to Mr. Harris and I indicated I received them from Kenneth Baker, the Judge Advocate at Fort Hamilton, and they were supposed to subpoena the records and concede these were the records kept at Fort Hamilton."

I later say yes, that was my understanding, I agreed to do that.

I happened to have occasion to speak to Captain Baker, who is now outside this morning and ready to testify under oath that he told Mr. Brettschneider that that record that purports to be Defendant's N was destroyed years ago and he did not give it to Mr. Brettschneider.

MR. BRETTSCHNEIDER: If the Court pleases, I would

* * *

* * *

Q Before you go any further look at the back of the envelope, please?

A It is on the back of the envelope. It is not on the back of the letter. The regulations say it is supposed to be on the material. That is why I didn't look at the envelope.

THE COURT: Is there a regulation that they have to put a received stamp on everything?

THE WITNESS: Yes, they are supposed to stamp everything.

There is an envelope here stamped that has no content.

Q The stamp "received" on an envelope?

A Yes, empty envelope.

Q Just look for documents that have no received stamp?

A I have an important comment to make about that --

THE COURT: Don't volunteer information. Your attorney will have an opportunity to ask you further.

THE WITNESS: There is nothing in the file that was delivered or sent by the registrant which does not have a Selective Service Stamp on it.

Q Will you please examine 3597 and tell us if

you see a stamp, a received stamp by Selective Service anywhere on that document?

A This document does not have a stamp --

Q That's the answer, thank you.

Now, let me ask you: When a registrant takes medical evidence directly to the examining station and presents it to a doctor, isn't it a fact that the doctor stamps it, that he considered this letter?

A It should be, yes.

Q That should happen?

A That is routine.

Q Does this 1959 report bear such a stamp?

A No, it does not.

MR. HARRIS: Your Honor, I object to the offer in evidence of this exhibit.

THE COURT: Let me see Exhibit 6 and the proffered exhibit which has not yet been marked as a defendant's exhibit.

Government's Exhibit 3597 for identification is to be marked as a defendant's exhibit.

(Defendant's Exhibit R was marked for identification.)

xx THE COURT: Do you want to proceed any further with respect to the voir dire, Mr. Betttschneider, before

I rule on Exhibit K?

BY MR. BRETTSCHNEIDER:

Q Major Sangemino, did you put that document in the file?

A Oh, no.

Q Was that in the file at the time that you reviewed it?

A Yes, it was.

Q Can you tell from that whether that document or a copy thereof was sent to the AFEES station?

A I am sure it had been because there is an entry --

MR. HARRIS: Your Honor, can he tell if this document was sent there?

THE COURT: Yes, it is not the operation of the witness' mind.

Is there anything in the file?

Q Is there anything in the file which would indicate that a document of that type might have been filed?

A Yes, sir. On the classification questionnaire on the item, entry November 23, 1971, I believe it was, it says "Medical papers received."

Q Are there any other medical papers in that file?

A No, sir.

THE COURT: Do you want to look at the file again?

MR. BRETTSCHNEIDER: Yes.

Q Would you refer to the exhibit where that entry is made?

A Yes. On the back of the classification questionnaire, Form 100, it reflects all actions, all materials received in a registrant's case. It is known as a very strong regulatory policy.

On November 23 it is written "Med papers received-rejected on induction RBJ 12/71."

Q And that entry would indicate to you from that --

A That they had to have some sort of medical evidence for them to make that notation on the Form 100.

MR. HARRIS: I have further voir dire, your Honor.

THE COURT: All right.

BY MR. HARRIS:

Q Now isn't it a fact that the medical papers that were received was the report of his medical examination on November 16 at Fort Hamilton and that he was RBJ one month, and I draw your attention to that report right there?

A That is --

Q Isn't that the medical papers the local board received, the report of his examination at Fort Hamilton?

MR. BRETTSCHNEIDER: If the Court pleases, I don't know how he can --

THE COURT: If he can answer it.

A This is the report of his examination which has the remark about epilepsy, and with this --

Q Is that not the report, that November 20 something entry refers to, that the local board received his medical papers?

THE WITNESS: Would you please ask me that question again?

THE COURT: Will the reporter please read the question.

(Question referred to read as above recorded.)

A I wouldn't know; I didn't make the entry.

Q Look at the last half of the entry. What does it say, the last three words? It says RBJ one month, doesn't it?

Well, if it doesn't refer to that medical report, how would the local board have known that he was rejected to be examined one month later; and not only that

it said he received the medical papers but indicates what the result of that medical examination was, is that not right?

A Not necessarily, no.

Q Another thing: Look at the report of the medical examination November 16. Is there not a notation on there that no letters were presented at the medical examination by the registrant?

MR. BRETTSCHNEIDER: If the Court pleases --

A It says -- on 16 November 1971 it says physical inspection, 16 November 1961. It says no disqualifying defect or communicable disease were noted this date and the word "no" was crossed out.

Q I'm referring to the other side, this. Does that say "No letters"?

A That says "No letters."

Q And the date of that examination is November 16, is that correct?

A That is correct.

Q And the result is an RBJ one month, is that correct?

A That is correct.

Q And on November 23 the board notes medical papers received, rejected on induction RBJ.

Aren't those the medical papers it refers to?

A Those are also medical papers.

MR. HARRIS: I renew my objection, your Honor.

THE COURT: It is not clear to me what the objection is. You see, we are talking about two things here. We have got a paper marked Exhibit B for identification which was formerly Government's Exhibit 3597 for identification which does have the name of Richard Falcoff on it.

MR. HARRIS: Well, I will object for openers, your Honor, on hearsay.

THE COURT: I will take it up with you at the side bar, gentlemen.

(At the side bar.)

THE COURT: Do we have the grand jury testimony of Falcoff?

MR. HARRIS: Yes.

THE COURT: Could I have a copy of that, please?

MR. HARRIS: This is Norman Falcoff, your Honor. You might start reading right there (indicating).

THE COURT: This is No. 3589 for identification.

You see, this presents the difficulty. I really would like to admit the document but I don't think I have any proper foundation at this time. I don't think

there is any evidence it comes from the Selective Service regularly kept in the course of business; it is not even signed, and there is no identification on it to even show it is the same Richard Falcoff.

MR. BRETTSCHNEIDER: That is a question of credibility.

THE COURT: Not necessarily. It is a question of admissibility.

MR. BRETTSCHNEIDER: The defendant said it was in the file and it refers to that. Now are we to say no? What your Honor is doing is, you are taking the testimony of somebody who is not testifying --

THE COURT: I looked at that because I thought it might give me a basis to admit it.

MR. BRETTSCHNEIDER: I think to conceal this type of a document that is in the file on this basis is really -- the answer is that this is a report and should not be concealed from anybody. The purpose of a trial is the truth.

THE COURT: Don't give me that.

MR. BRETTSCHNEIDER: I will concede its purposes, that it refers back to 1959.

THE COURT: That has nothing to do with it.

Did you want to be heard, Mr. Harris?

MR. HARRIS: Yes. The document has not been authenticated. It is hearsay. This bears absolutely no grounds to admit the document.

THE COURT: There is no basis upon which a reasonable person could infer that this unsigned, unstamped document was a part of that file. The entire docket-- what is the number of that form that lists all the items in the file?

MR. BRETTSCHNEIDER: Judge, may I ask, if that is the case, then what we have to do is get the testimony of Mr. Falcoff who can't be found. I gave you the information we had. There are no addresses --

THE COURT: I suggest you take that up on a different basis and see if you can't reach some stipulation to cover Falcoff's testimony. Saying it is in the file and saying the kid had epilepsy in 1959 are two different things.

MR. HARRIS: The number is Form 100, your Honor.

THE COURT: Form 100, read together with the balance of the Exhibit 6 just simply does not permit an inference that this paper was ever regularly kept in the regular course of business of the Selective Service System. So I am going to have to sustain the objection on the ground of improper foundation.

I would like to suggest very strongly that you attempt to accommodate each other, if it is true that Normal Falcoff cannot be found, to have a stipulation as to what he testified here on page EJC 4-1 in Exhibit 3589, because I think this jury is entitled to know that Richard Falcoff was treated for these conditions in 1959, but this is certainly not part of the Selective Service file.

MR. BRETTSCHNEIDER: Judge, at this time I would submit -- and I have indicated to the Court that I have not been able to trace a Normal Falcoff; he does not live --

THE COURT: I will take that up with you later.

Why don't you reserve on the exhibit? The jury is entitled to know the underlying fact here, but it is certainly not admissible as part of this file. There is no proper foundation for it.

MR. HARRIS: Will you announce your ruling in open court, your Honor?

THE COURT: I am going to reserve on it. I would like to give you an opportunity to straighten it out.

MR. HARRIS: Your Honor, as to this exhibit I would like a ruling on my objection. There is an inference of hanky-panky here, and that is the reason.

THE COURT: All right.

(End of side bar discussion.)

(In open court.)

THE COURT: The objection to Exhibit R for identification is sustained without prejudice to offer it again later on in the trial based on a different foundation, if possible.

All right, let's proceed with something else.

DIRECT EXAMINATION (Continued)

XX BY MR. BRETTSCHNEIDER:

Q Now, Major Sangemino, did you have occasion to examine the log books or the records of the people coming into the building?

A Yes, I did.

Q How many books were there all together?

A There were 31 books.

Q And did you have occasion to go through the books and to see what names there were?

A Yes, I did.

Q Did you look through all the books to see what names were on the books?

A No, I didn't go through all the books.

Q What were the facts and circumstances surrounding your examining the books?

* * *

* * *

A I met him outside the building, the federal building, on the corner of Duane Street and Broadway.

Q Did you have any appointment with him?

A Yes. He had called me the Friday before that. January 20th was a Monday. He called me Friday, January 26th, and he asked me -- he was very urgent and he asked me to please meet him during my coffee break on Monday, and I agreed to.

Q Did you later ascertain that both those conversations, the one on the 25th and the 28th were taped by the U.S. office?

A Yes.

Q I now direct your attention to the 20th of March. Did you have occasion to go to the grand jury in this building?

A Yes.

Q Would you give me the facts and circumstances surrounding how you came here?

A I received a subpoena at 12 o'clock at my office to appear in the grand jury room at 2 P.M. The subpoena contained --

THE COURT: You answered the question. You came pursuant to a subpoena.

Q What did you do after you got the subpoena?

A I tried to see what it was all about.

THE COURT: No. Just tell him what did you do.

Q Did you call anybody?

A Yes. I called Thomas Maher and asked him to define for me what Title 18, USC meant.

b3 Q After that did you go over to the U.S. Attorney's office?

A Yes, I got there 1:30.

Q Did you meet anybody at the U.S. Attorney's office?

A Yes, I met Nathan Lemler.

Q Was Nathan Lemler there when you got there or were you there first and Nathan Lemler came later?

A I was there first and Nathan Lemler came in afterward.

Q Did you have a conversation with Mr. Lemler at that time?

A Yes, I did.

Q What did you say to him and what did he say to you?

A He was passing by the room I was sitting in, looked in and said, "What are you doing here?"

I said, "I got a subpoena and I figure it's about what you were telling me about."

And he said, "What are you going to say?"

I said, "What can I say?" I said, "All I can

do is tell them the truth."

He said, "Bill, I am scared to death. I am worried. I am worried. I don't know what to do."

I said, "You have nothing to worry about. Go in there and tell the truth."

He said -- he asked me, "Do you think it's going to be all right"?

I said, "Of course it's going to be all right."

He kept referring to how terrible he was feeling, how upset he was feeling. He was pleading with me like to elicit my sympathy. That's what it was, about how terrible he felt and I felt terribly sorry for the man and I was trying to comfort him. And then he was called inside.

Q Prior to that time, did you tell him about your conversation with Maher?

A Oh, yes, yes. I told him -- that's right. I told him I got the subpoena and called him to find out what it was about, and I told him that conversation, yes.

Q Later that afternoon, after you got out of the grand jury, what happened?

A I was petrified. I went downstairs--

THE COURT: No, just tell us what happened.

A I left the room, I took the elevator downstairs, I went into the lobby and Mr. Lemler was there.

Q And is that the conversation or the tape recording which was played in open court?

A Yes.

Q Now, thereafter did you have any dealings or conversations with Mr. Lemler?

A No.

Q Now, sir, let's direct your attention back to June 15th again, 1971. That's the date the records indicate that Mr. Mofschowitz came up to your office.

Now, sir, do you recall him coming up to your office?

A Yes, vaguely.

Q And did he leave an envelope or anything?

A That's what I remember, the envelope that had the Las Vegas trip, yes.

Q The government's exhibit indicates a phone call made to Dr. Lemler on June 15, 1971.

THE COURT: Didn't we have all this?

MR. BRETTSCHNEIDER: Yes, sir. I just want to ask him something.

Q At any time on that date, did you ever take $300 or accept $300?

A No.

Q Was there ever any money in that envelope?

* * *

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summation? How long will it be?

MR. BRETTSCHNEIDER: I am estimating within an hour, Judge.

THE COURT: How about you, Mr. Harris?

MR. HARRIS: An hour and a half, your Honor.

THE COURT: I will have my Rule 30 conference with you in about 10 or 15 minutes from now, and I think I ought to send the jury home by bringing them out here and instructing them that both sides rest and that they are not to discuss the case.

Send them out, please.

MR. BRETTSCHNEIDER: Before your Honor adjourns this matter, we still have left undecided that matter of the EEG with respect to Falcoff.

THE COURT: I thought you rested. I thought you were going to raise that again if you wanted to.

MR. BRETTSCHNEIDER: It slipped my mind that the matter was there. I just noticed it in my notes.

If your Honor rules that may not be accepted into evidence, at least I think the jury should be advised as to where this document came from, it was not put in by the defendant and that it can't go in for whatever reason the court determines.

THE COURT: Please be quiet in the back of the

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room. We are going to take a recess in about three minutes.

MR. BRETTSCHNEIDER: Whatever the Court directs the jury with reppect to that document. But I would respectfully submit to your Honor that in the interest of justice, however, the weight that may carry, I believe that it should go in. I further submit --

THE COURT: Is the record absolutely clear about the availability of the Falcoffs, father and son?

MR. BRETTSCHNEIDER: I will state for the record again what I said to the Court in reference to those two documents, that I have contacted or attempted to contact Mr. Richard Falcoff at the address indicated in the indictment and that was an address --

THE COURT: What is the number of the grand jury testimony of Falcoff?

MR. HARRIS: Your Honor, there are two numbers: 3589 is Falcoff, Sr.; 3590 is Richard Falcoff, the registrant.

THE COURT: Neither of them is available?

MR. HARRIS: The only address I ever had was for Richard Falcoff when I subpoenaed him for the grand jury. His father showed up gratuitously that day. It was not by direction of the U.S. Attorney.

MR. BRETTSCHNEIDER: The address in Peoria, Illinois, he is not there, he has moved.

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THE COURT: It seems to me it would be reasonable to attempt to reach a stipulation or accommodation that if Falcoff were located and brought here he would testify here as follows, and then just read those three or four lines of the grand jury testimony. I see no basis to take Exhibit R for identification, but I think it is unfortunate that Falcoff can't be located, apparently. It is a peripheral issue. It isn't really going to alter this case, but I am inclined to agree the jury ought to know about it.

MR. HARRIS: If you would take time to read in its entirety 3589 --

THE COURT: I am looking for it right now, Mr. Harris.

MR. HARRIS: Here is another copy. Here is 3590, a copy for you.

Your Honor, if you wouldread these and read the portions specifically where young Falcoff talks about his epilepsy, you will see that through all of the years in Louisville he doesn'tremember where he got his prescriptions filled and who treated him, you will see the inference in the last few years Falcoff had epilepsy when he was nine years old is sheer folly.

THE COURT: You have this paper and I have no basis to assume as a practical matter that the paper is fraudulent or that it relates to a different Falcoff. What about this

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laboratory? Where is that located? Or this Frank Pulito.

MR. HARRIS: I have no idea. I have no idea as to the authenticity of that. That was brought down by a man who was warned of his rights and was a potential target of an investigation. Now, under those circumstances I am not about to vouch for the authenticity of that document.

THE COURT: Of course, if it were fake it certainly wouldn't be dated in 1959, would it?

MR. HARRIS: Our position is that there are rules of evidence covering these.

THE COURT: There are indeed.

MR. HARRIS: We stand on those rules.

THE COURT: I will give it some further thought and I will read these two exhibits, 3589 and 3590, in their entirety. Right now I don't see any basis whereby I could admit Exhibit R for identification. So I think you will have to assume that unless I can come up with a different ruling after reading those two exhibits they are not coming in. However, it's unfortunate that nobody in connection with this paper apparently has made much of an effort to find them. Falcoff, Jr. the government found less than a year ago.

MR. BRETTSCHNEIDER: I indicated to the Court that the two addresses which I do have for Falcoff, Jr., at least

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one address is in Candlewood Road in Peoria, Illinois. He does not live there. There is no forwarding address.

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THE COURT: How about Falcoff, Sr.?

MR. BRETTSCHNEIDER: I have no address.

THE COURT: What efforts were made to find him or Frank Pulito or the laboratory of encephalography?

MR. BRETTSCHNEIDER: We have not.

THE COURT: Or Dr. Alfred Nathans. All this was available to you some time back.

MR. BRETTSCHNEIDER: Some time back, your Honor, is Monday -- no, my error.

THE COURT: You had it longer than Monday.

MR. BRETTSCHNEIDER: I had the information that was written on it. I had not the document but that is my fault. I did not examine the file.

THE COURT: How long has this been extant, this Exhibit R for identification? When was this first furnished to the defendant? It is peripheral. You shouldn't be arguing about it. You should find a way to agree on it without any possible error or any possible injustice arising out of it.

I will have to read the grand jury testimony. I don't see any basis for taking it. There are ten different ways to prove that document, through Pulito, through Nathans,

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through the laboratory itself.

MR. BRETTSCHNEIDER: One of the doctors is dead. At least that is my recollection from reading the minutes.

THE COURT: It is a very peripheral issue.

MR. HARRIS: Your Honor, this document was furnished January 30, 1975, the day the defendant saw it.

THE COURT: If it is that important, there was plenty of time to get a foundation for it.

I will tell the jury they are not to draw any inferences whatsoever from any of the rulings made as to evidence.

Bring the jury back in. I will dismiss them for the day and then I will have a conference with counsel.

(Jury enters courtroom.)

THE COURT: Members of the jury, we have now reached that stage in the trial where the taking of evidence I believe has been concluded and both sides have rested. Tomorrow morning when we resume you will hear the closing arguments of the attorneys, and when they finish you will receive my instructions as to the law in this case and as to how you go about performing your duties as jurors in connection with your decisions concerning the fact issues.

Now, the closing arguments of the attorneys and the Court's instructions are important parts of the trial and it's very important that each of you keep an open mind

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as to this case and don't attempt to decide it or each any conclusions at all until after you have heard the closing arguments of the attorneys and the Court's charge or instructions.

So I ask you specifically, as I have asked you during the entire course of the trial, keep an open mind, don't discuss the case and don't read or hear anything in any news media or anything like that that might affect your impartiality in the case, and return here at 10:30 tomorrow morning and at that time we will have the closing arguments or summations followed by my instructions and then you will begin your deliberations as jurors.

All right, will you please withdraw from the courtroom. You are excused for the day.

(Jury leaves courtroom.)

THE COURT: The court will take a ten-minute recess and then I will confer with counsel and the court reporter in the robing room.

(Recess.)

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(In the robing room.)

THE COURT: Do I have any written requests to charge from the defendant?

MR. BRETTSCHNEIDER: No, your Honor.

THE COURT: If there are I will take them. I will even take them in pen and ink, but the sooner I get them the sooner I can deal with them.

All right, I will outline to you briefly the nature and extent of the instructions I propose to give, and any exception you take now you will not have to take at the close of the charge, but you are not bound to take it now; but if you do it will inure to your benefit at the end of the instructions.

I first explain to them the importance of their fairness and impartiality; that the parties stand as equals before them; that their duty is to pass on the fact questions and credibility and draw inferences of fact; that my instructions on the law are binding upon them and must be taken as a whole; that their recollection of the testimony governs; that the attorneys have the right to make objections, that they are simply performing their duty.

I impress upon them the fact of my own neutrality, and that I hold no opinion in the case; that

* * *

before the words "for example". And I thought I would tell them that, for example, it may have been and indeed was, perfectly proper and within his duties to speak to Selective Service registrants and draft counselors in the course of his duties; that it is completely proper to speak with officials of the local boards in the United States Army, and that his dealings may have been perfectly consistent with the performance of the duties of his office. However, if he was being paid by a private party such as Lemler for so doing, it becomes criminal.

MR. HARRIS: That, your Honor, I think covers what I was referring to.

THE COURT: Without the money there is no case here. You have got to realize that. And all the stuff about the politicians in here didn't help this case a bit, because all this stuff makes me think and makes the jury think maybe he could somebody. He starts off with the concept he can't help anybody, and then he shows that people as sagacious as William FitzRyan are sending three cases a week to him.

Now let's go to No. 25. I would not like you to use the term perjury in connection with the statute unless your adversary does. If your adversary refers to it as perjury in his summation, then, of course, you

* * *

Now, is there anything I have not covered or anything you need to know in order to compose your summations?

MR. BRETTSCHNEIDER: Judge, my only question is now, particularly in this type of a case where I have never had a matter with so much left to speculation as to what happened with certain people and everything else, I should like some charge with respect to they may only consider what is evidence in this court, not speculation.

THE COURT: I ordinarily tell them that they should decide the case on the evidence.

I will give that some consideration, but, you see, everybody has lost sight of the whole thing. If he didn't take any money he ought to be acquitted here. And if they believe Lemler is sufficiently corroborated by Mofschowitz so that he took money, and that there was money in the envelopes, that's the end of the ball game, and that would be the basic instruction which the jury ought to receive; and if they don't believe it beyond a reasonable doubt they ought to acquit. That's what we are really talking about here, and all of this other stuff is so much window dressing; it doesn't have any real significance.

The question is, do you believe Lemler, plus

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Mofschowitz, plus the tape, which has, at least to my ears, some suggestion of guilt about it. That's a question for the jury. People could differ, but that's about it. It's not clear to me that he ever actually could get any money out. The defendant's case almost tried to prove that he could.

I don't mean to keep you gentlemen.

All right, is there anything further?

MR. BRETTSCHNEIDER: No.

THE COURT: Do you have anything?

MR. HARRIS: No, I don't, your Honor.

THE COURT: If you want to cover Manton, you can.

MR. HARRIS: Well, in thinking about it, in reviewing the requests as your Honor has just done, it occurs to me that request to charge, I think it is 24, which cites --

THE COURT: It almost follows if the fellow took money he didn t take money except for a purpose. Nobody gives money except for a purpose. A man like Lemler wouldn't pay money to a fellow who wasn't helping him.

MR. HARRIS: Well, Lemler may have flimflammed himself.

THE COURT: I doubt that.

All right, I will see you all in the morning.

(Adjourned to Thursday, April 17, 1975, at 10.30 o'clock a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Thomas Maher	867	877	888	888
Dall Forsythe	884	888	894	
William Sampomiro (Resumed)	904	917	1012	

EXHIBIT INDEX

Government	Identification	In Evidence
24	948	

BEST COPY AVAILABLE

1045

UNITED STATES OF AMERICA
vs.
WILLIAM SANGEMINO

CLERK'S COPY
RETURN TO COURT REPORTERS ROOM 233 FOR FILING

April 17, 1975,
10:30 A.M.

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(In the courtroom in the absence of the jury.)

THE COURT: Gentlemen, I am going to adhere to my prior ruling with respect to Exhibit R for identification.

Now, I also agreed yesterday in the absence of the jury to grant the defendant's motion to strike out Exhibits 7 and 7A, which are the driver's licenses of Falcoff. I didn't tell the jury about it. Now I am prepared to do so unless counsel agree that they don't want me to do so.

MR. BRETTSCHNEIDER: I should like that, Judge. In fact, I was going to recommend that this morning.

MR. HARRIS: Your Honor, I think due to the untimely objection -- when a judge admits something and later changes his mind that is the strongest kind of inference; the jury thinks --

THE COURT: Really that is not so at all. It is not that I changed my mind. No proper objection was made.

MR. HARRIS: I know you didn't. But what I am saying is, what does it look like to the jury?

THE COURT: Well, I think Exhibit 7 is admissible but I have doubt about 7A.

MR. HARRIS: Your Honor, be that as it may, all I am saying is that if the jury knows that your Honor first admitted it --

THE COURT: Well, I will tell them that they are not to speculate about my reasons.

MR. HARRIS: That it has to do with matters of law.

THE COURT: Yes, and that they are not to speculate about it.

MR. BRETTSCHNEIDER: There was some question we spoke about on Exhibit R --

THE COURT: I have read the grant jury minutes concerning Falcoff, and I must say there is no proper foundation to admit Exhibit R, so I am adhering to my ruling on it.

MR. BRETTSCHNEIDER: I have no objection to--

THE COURT: Well, you ought to preserve your record in that regard.

MR. BRETTSCHNEIDER: Yes, I object to the failure to put this into evidence, for the protection of the record.

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However, your Honor indicated that there might be some statement with respect to this document or where it came from.

MR. HARRIS: It was not in evidence.

THE COURT: I am duty bound to sustain the objection to Exhibit R for identification, as I see it. The objection is a matter of right which they can take, and I don't have any discretion to admit it. I don't know what else you want me to do.

MR. BRETTSCHNEIDER: If the Court please, with respect to this document, the testimony of the witness is that it was in the file. Whether or not it was or was not is a question of fact for the jury to determine.

THE COURT: Admissibility is a question of law.

MR. BRETTSCHNEIDER: That is correct, but if it was in the file --

THE COURT: It would be admissible --

MR. BRETTSCHNEIDER: As part of a document, records kept in the ordinary course of business. And the jury should determine as a question of fact whether this was, in fact, in the file at the time or not.

THE COURT: There is no possible or reasonable basis by which the jury if they saw these other exhibits which are 3590 and 3578 for identification could reach such

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a conclusion.

Now, if we are going to give the jury questions of admissibility which we are not required to do here, then the government would have the right to bring in these other matters to see where they got the paper; bring in the Assistant United States Attorney who first took it in his hands, and that would make chaos out of the trial here if you are going to wind up with Mr. Harris on the witness stand after a two-week trial. That would be absurd.

No reasonable person could find, if they were confronted with all the evidence, that this paper was ever a regularly kept record of the local board or a record of the local board made in the regular course of business. That is the basis of the foundation. And if they were able to meet this issue you would get way off on a collateral matter which would only confuse and disconcert the jury. The last thing in the world I want is a U.S. Attorney for this district on the stand. It is bad enough to get one from Brooklyn.

But you have an exception to the court's failure to find admissibility of Exhibit R for want of a proper foundation.

Did I interrupt you, Mr. Brettschneider?

MR. BRETTSCHNEIDER: No. I just say I object to

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the inference or remarks your Honor made with respect to bringing an Assistant U.S. Attorney in from Eastern District. The fact was this was a witness prior to the time --

THE COURT: I have no doubt we had a right to do it, but it puzzles me that a U.S. Attorney is giving legal advice under these circumstances to others.

MR. BRETTSCHNEIDER: But the primary purpose of his testimony was his association --

THE COURT: I don't know what the primary purpose of it was, but a man gets a grand jury summons and gets on the telephone and asks an Assistant U.S. Attorney in another district what it is all about, and he makes a phone call to try to find out and gives his opinion as to Title 18.

You know, Mr. Harris was good enough, he didn't ask the fellow what his opinion was. And I didn't either. So let's forget that aspect of it. I am not criticizing you. I just don't think too highly of an Assistant U.S. Attorney giving advice to a person who has a subpoena in another district. He should tell him "I can't speak with you."

All right, let's bring in the jury.

* * *